

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

: CIVIL ACTION NUMBER:
: 19-md-02875
IN RE: VALSARTAN PRODUCTS :
LIABILITY LITIGATION :
: DEPOSITION DESIGNATION
: HEARING VIA TEAMS

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
September 27, 2024
Commencing at 9:32 a.m.

B E F O R E: **THOMAS I. VANASKIE (RET.)**
 SPECIAL MASTER

A P P E A R A N C E S:

MAZIE SLATER KATZ & FREEMAN, LLC
BY: ADAM M. SLATER, ESQUIRE
103 Eisenhower Parkway
Roseland, New Jersey 07068
For the Plaintiffs

KANNER & WHITELEY, LLC
BY: DAVID J. STANOCH, ESQUIRE
701 Camp Street
New Orleans, Louisiana 70130
For the Plaintiffs

Sharon Ricci, CRR, RMR, Official Court Reporter
sharon.ricci.usdcnj@gmail.com
(267) 249-8780

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

A P P E A R A N C E S (Continued):

NIGH GOLDBERG RASO & VAUGHN
BY: DANIEL A. NIGH, ESQUIRE
1333 College Parkway, #1049
Gulf Breeze, Florida 32563
For the Plaintiffs

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
BY: NINA ROSE, ESQUIRE
1440 New York Avenue, N.W.
Washington, DC 20005
For the Defendants Princeton Pharmaceuticals,
Solco Healthcare U.S. LLC, and Zhejiang Huahai
Pharmaceuticals Ltd.

GREENBERG TRAURIG LLP
BY: VICTORIA DAVIS LOCKARD, ESQUIRE
3333 Piedmont Road, NE, Suite 2500
Atlanta, Georgia 30305
Counsel for the Defendant, Teva Pharmaceutical Industries
Ltd., Teva Pharmaceuticals USA, Inc., Actavis LLC, Actavis
Pharma, Inc. (Collectively Teva)

KIRKLAND & ELLIS, LLP
By: JACOB M. RAE, ESQUIRE
601 Lexington Avenue
New York, New York 10022
For the Defendants Torrent Pharma, Inc.
and Torrent Pharmaceuticals Ltd.

ALSO PRESENT:

Loretta Smith, Judicial Law Clerk

Larry Macstravic, Courtroom Deputy

1 (PROCEEDINGS held via Teams Conference before Special
2 Master Thomas I. Vanaskie at 9:32 a.m.)

3 SPECIAL MASTER VANASKIE: All right. We're going to
4 review the designations of deposition testimony for some of the
5 Torrent witnesses this morning.

6 I did receive last night more designations, but I'm
7 not prepared to address them today, the ones that came in last
8 night. And I thought we'd start with Bernadette Attinger.

9 How do you pronounce her name?

10 MR. RAE: I believe it is Bernadette Attinger, but I
11 was not at her deposition or involved in it, so I'm not
12 personally familiar with the correct pronunciation of her name.
13 I'm not sure if plaintiffs' counsel here is more familiar with
14 that than I am.

15 MR. NIGH: I think it's Attinger as well, but again, I
16 wasn't at the deposition. But that's my best guess.

17 SPECIAL MASTER VANASKIE: All right. We're going with
18 Ms. Attinger, and we'll -- let me pull up the spreadsheet that
19 lists the objections, and I'll have on another monitor the
20 actual testimony.

21 Now, as I'm looking at this, it seems like we start at
22 page 59 of her transcript. Is that correct?

23 MR. RAE: Yes, Your Honor, I believe that's correct.

24 SPECIAL MASTER VANASKIE: And it's just lines 1 and 2,
25 and it says, "Not a question."

1 MR. RAE: Yes, Your Honor. Our objection here is this
2 is an introduction of an exhibit, which is Ms. Attinger's CV at
3 the time of her deposition. There's no questioning that
4 follows using that document. There's no foundation being laid
5 for that document. We don't think it's proper to be
6 designating the introduction of an exhibit where there's no
7 questions asked about that exhibit subsequently.

8 SPECIAL MASTER VANASKIE: Daniel?

9 MR. NIGH: Your Honor, I think we can attach the
10 exhibit without having to have a question to it. I think it
11 can come in as evidence. It's her CV.

12 SPECIAL MASTER VANASKIE: Well, I'm not sure you can.
13 You don't have a question and an answer.

14 We'll sustain the objection.

15 MR. NIGH: Okay. I guess, if that's the case, I guess
16 we should designate lines 4 to 9 and then line 13.

17 SPECIAL MASTER VANASKIE: Yeah. Why didn't you
18 initially do that?

19 MR. NIGH: Because I thought we could attach it. I
20 mean, it was provided by the defense.

21 SPECIAL MASTER VANASKIE: Well, I will allow you to
22 designate lines 4 to 13. I mean, there shouldn't be a dispute
23 over this, but there is, so --

24 MR. RAE: Your Honor, if I could interject.

25 We'll need to consider whether or not we have other

1 objections to this exhibit coming in, although we can deal with
2 that from -- but if we're going to be designating testimony to
3 introduce this exhibit, I would suggest that they need to
4 include lines 14 to 16 as well because that actually lays the
5 foundation for the exhibit.

6 SPECIAL MASTER VANASKIE: Yeah, that looks good to me
7 too.

8 MR. NIGH: That's fine.

9 SPECIAL MASTER VANASKIE: So we'll include lines 14 to
10 16.

11 MR. RAE: And --

12 SPECIAL MASTER VANASKIE: Go ahead.

13 MR. RAE: Your Honor, just to be clear, we're not --
14 our position would be that we still don't understand the
15 relevance of this document. It's a CV of Ms. Attinger.
16 Ms. Attinger is a regulatory affairs employee who worked at
17 Torrent from September 2018 to July of 2019. That's in -- the
18 testimony is in the first counter-designation that we have,
19 which plaintiffs accepted.

20 I'm not sure why her -- so this is an employee who
21 joined Torrent only after the recall was already in effect that
22 relates to the add issue of the valsartan product. She worked
23 in the regulatory affairs department. We're going to be
24 talking about the extent to which any of her testimony is
25 relevant throughout today, but I think that's important context

1 for -- I'm not sure what relevance the resume of someone who
2 didn't join Torrent until after all of the conduct that's
3 actually at issue in this trial is -- or why it should be
4 coming in front of the jury.

5 SPECIAL MASTER VANASKIE: Daniel?

6 MR. NIGH: Well, Your Honor, she is actually -- she is
7 employed during some of the recalls and while some of the
8 product is on the market because -- just to give some
9 background, there are multiple recalls that Torrent has. There
10 are recalls that Torrent has that are related to NDMA, but
11 later there are recalls that Torrent has that are related to
12 NDEA. And she's involved in those responses. She's one of the
13 key people involved in the responses to the recall.

14 SPECIAL MASTER VANASKIE: Yeah, I just --
15 (Simultaneous speakers.)

16 MR. NIGH: But to say she is not here at the time --
17 you know, she is. I mean, there's a span of when these recalls
18 occur, and there's a span -- even though the first recall
19 occurs September 19th, there's still a lot of product that has
20 nitrosamines that's on the market for sometime thereafter.

21 SPECIAL MASTER VANASKIE: Yeah, I see it as background
22 information. I don't see any prejudice to Torrent from
23 providing the CV of a witness.

24 I'll overrule the objection.

25 MR. RAE: All right. Understood, Your Honor.

1 And just very briefly, and I know this is getting
2 pretty far afield, so I don't want to get bogged down in it.
3 But just to correct the record here, Torrent began to recall
4 its valsartan products on August 17th.

5 I believe by -- somewhere around August 22nd or 23rd,
6 as a result of the NDMA issues, every valsartan product that
7 Torrent sold had been recalled. The recall had been expanded
8 to cover all of its products. That recall was complete
9 within -- in terms of its issuance, before Ms. Attinger became
10 employed at Torrent.

11 There -- I don't recall whether or not there would
12 have been subsequent recalls issued with respect to NDEA
13 specifically, but they would have been additional recalls
14 covering the same product that had already been recalled to the
15 extent that such a thing exists.

16 MR. NIGH: Yeah, I think to the extent that, you know,
17 she's there at a key time frame when NDEA is found in -- I
18 don't think the numbers are -- approximately half the product,
19 but she's there at that time where they are investigating the
20 NDEA. She's handling the recall response, and she's one of the
21 people that's involved in the recall response to that part of
22 the problem.

23 I think we can move to the next objections.

24 SPECIAL MASTER VANASKIE: Yeah, I think so too.

25 Hold on. Just let me get my bearings straight here.

1 I'm trying to...

2 MR. NIGH: And yes, I did misspeak on September. It
3 is August. That was my mistake.

4 SPECIAL MASTER VANASKIE: So I have us now on
5 counter-designations, page 63, line 12 to 24.

6 And you are objecting, Daniel, to this
7 counter-designation?

8 MR. NIGH: Yeah. I just don't know what it's in
9 response to.

10 MR. RAE: And, Your Honor, given that I think this is
11 clearly tied to the designation of testimony on page 64, line 9
12 to 18, as well as the testimony on page 65, line 6 to 12, we
13 would agree that we have a number of counters tied to those two
14 pieces of testimony. And to be clear, our position is our
15 counters will fall away if our objections to that testimony is
16 sustained.

17 But the testimony here is asking Ms. Attinger, who has
18 no background as a chemist -- she did have -- before she was a
19 regulatory affairs employee, she did have some background as a
20 biologist but not as a chemist. She's being asked questions
21 about the term "ghost peak," and Your Honor has probably heard
22 some discussions about ghost peak so far because it's a term
23 that ZHP used to refer to unknown peaks that are at issue in
24 this litigation related to the discovery of nitrosamines.

25 Torrent never used the term "ghost peak." There is no

1 Torrent witness who will testify, there's no Torrent document
2 that indicates that this term was ever used at Torrent. And
3 our first counter here is showing that the way in which the
4 plaintiffs establish knowledge of Ms. Attinger with respect to
5 the term "ghost peak" ties to employment at a prior employer;
6 that she heard this term once at a company. She's not even
7 sure where it was, but she thinks it might have been a
8 different pharmaceutical company that she had previously worked
9 at called Avet.

10 She testifies that she doesn't actually know what this
11 term means, and then there's some speculation by her about what
12 it means that is both irrelevant, since it's not relevant to
13 Torrent. It's calling for her to testify as an expert on an
14 area that she's not an expert, and she should be precluded
15 under Rule 701 because she's not a chemist. And it would be
16 very prejudicial to Torrent to have the plaintiffs play
17 testimony about a Torrent witness talking about ghost peaks
18 when there is no indication in the record that Torrent ever
19 discussed the term or used the phrase "ghost peak,"
20 particularly without the context showing that that witness's
21 only knowledge of the term "ghost peak" comes from employment
22 that has nothing to do with Torrent.

23 SPECIAL MASTER VANASKIE: No, I think it's a relevant
24 question, and I will allow the designation and
25 counter-designation to be presented to the jury.

1 So that would cover the testimony, I take it, at pages
2 63, lines 12 to 24; 64, lines 9 to 18; 64, lines 19 to page 65,
3 line 5; and page 65, line 6 to 12; and page 65, lines 13 to 16.

4 The jury is going to be hearing about ghost peaks and
5 I don't see any problem and it doesn't tie it to Torrent. And
6 I think she distinguishes it from Torrent. But it's part of
7 the case.

8 All right. I think we're now moving to page 82,
9 line 24. Correct me if I'm wrong.

10 MR. NIGH: Are there any objections to 82, line 24? I
11 don't think I have that.

12 MR. RAE: I --

13 SPECIAL MASTER VANASKIE: No, there aren't any.

14 (Simultaneous speakers.)

15 SPECIAL MASTER VANASKIE: No, there aren't. That's
16 correct.

17 I think we're now at page 116, line 13. Again,
18 correct me if I'm wrong.

19 MR. NIGH: I think that's right.

20 MR. RAE: That's right, Your Honor.

21 And, Your Honor, this -- our objection here, which is,
22 again, a 401, 403 and 701 objection, goes back to
23 Ms. Attinger's role in this case.

24 The question -- the first question here and the
25 questions that follow are asking Ms. Attinger about

1 hypotheticals regarding a theoretical audit problem with an API
2 supplier that a company has been using for a finished dose
3 product.

4 There's no establishment of an actual audit problem
5 with that API supplier. This is extracted from context, and
6 it's extracted from context because the thing -- like, because
7 they're not asking Ms. Attinger questions about her personal
8 knowledge about any issues with ZHP audits. They're just
9 asking her a general question of, if there's an issue with an
10 audit, what happens next?

11 That's improper testimony. It's not relevant. And in
12 particular, it's prejudicial because the question precedes from
13 the premise that there was a problem with an audit and goes on
14 to ask a series of questions that precedes from that
15 hypothetical that we would dispute whether or not there's any
16 foundation in the record for.

17 SPECIAL MASTER VANASKIE: All right. Daniel?

18 MR. NIGH: There's two things. First, this isn't
19 wholly absent of any evidence. That's one of the key
20 cornerstones of our allegations against Torrent, and that is,
21 that they conducted inappropriate or incomplete audits. And
22 that's their duty, is to oversee their API supplier.

23 And so we are asking her, in her role -- she was
24 partially involved in the response to the FDA and the -- and as
25 they're inspecting -- or as they're trying to figure out what

1 happened from Torrent's viewpoint in this recall, she's
2 responding to the FDA with questions they have. So we believe
3 that, in her role, it's appropriate to ask her these questions
4 because it's forming part of the basis of the FDA's response.

5 MR. RAE: Your Honor, if I may briefly.

6 SPECIAL MASTER VANASKIE: Yes.

7 MR. RAE: Thank you, Your Honor.

8 The cornerstone of Rule 701 is that non-expert
9 witnesses can provide opinion testimony only where they have
10 specialized knowledge and training, but also where they have
11 personal knowledge of the facts that are at issue for that
12 opinion testimony.

13 These are opinion questions, and there's no grounding
14 in personal knowledge. The hypothetical audit that plaintiffs
15 are speculating about here could only be audits that Torrent
16 conducted years before Ms. Attinger's employment at Torrent,
17 they don't establish personal knowledge for.

18 MR. NIGH: Your Honor, the personal knowledge is her
19 education and experience. That's the personal knowledge. This
20 is what she's employed to do, and so she can respond to what
21 would happen in this sort of situation, how she had been
22 trained by the company to respond.

23 You know, there's numerous ways that she would possess
24 this information. So it's not seeking an expert opinion. It's
25 seeking her, in her role as a regulatory person hired by

1 Torrent, what would she do if this situation occurred.

2 SPECIAL MASTER VANASKIE: Yes, I will overrule the
3 objection and allow the testimony on page 116, from line 13
4 through line 24 -- I am sorry, line 22. That's what's been
5 designated.

6 You're cutting off the answer, Daniel, on 116 -- no,
7 it's through 24. I'm going back and forth in my head here.
8 But it's through 24.

9 Now we're up to 126, line 14.

10 MR. RAE: And, Your Honor, I'm happy to make the same
11 arguments I just made, but I think this is the same issue as
12 the one you just ruled on.

13 SPECIAL MASTER VANASKIE: Yes, I think it is. And I
14 appreciate, Jacob, when we do that so we could move forward a
15 little quicker.

16 So it would be the same ruling. I'll allow that
17 testimony from 126, line 14 to 126, line 22.

18 I'm trying to understand my notes. But we're moving
19 now to page 129, line 9.

20 MR. RAE: And we had a counter-designation from
21 lines 2 to 8. The plaintiffs --

22 SPECIAL MASTER VANASKIE: Yes.

23 MR. RAE: -- have an objection to that.

24 SPECIAL MASTER VANASKIE: The counter-designation is
25 in --

1 MR. NIGH: We withdraw, yeah.

2 MR. RAE: So for our objection here, I think this ties
3 to some of the issues that we've already talked about, but this
4 is a kind of more -- there's a foundation problem that starts
5 to come in here too that hasn't been present in our prior
6 objections, which is that, again, Ms. Attinger took over in
7 September of 2018. That's after Torrent was no longer using
8 ZHP as a supplier. That's after all of the relevant conduct
9 related to Torrent's quality department's supervision of ZHP as
10 an API supplier would have taken place.

11 And plaintiffs are asking the witness a series of
12 questions about what she knows about things that happen with
13 respect to that historic conduct of Torrent, and she doesn't
14 know the answers to those things. And so we think there's a
15 foundation problem with this line of questioning precisely
16 because the audit that's being asked about is something that
17 she doesn't have personal knowledge of and that preceded her
18 employment at Torrent.

19 And we also think that there's a 403 problem because
20 it will be confusing to the jury to hear a regulatory affairs
21 witness, Ms. Attinger, who's taking over for Ms. Chitty, who
22 will testify to having some amount of knowledge of these
23 issues, testifying that she doesn't know about them.

24 The jury may get confused about the time frame of the
25 transition between Ms. Chitty and Ms. Attinger. They may infer

1 from this line of questioning that there's some issue with the
2 scope of awareness of what Torrent was doing with respect to
3 its auditing and supervision of ZHP, that -- and that confusion
4 can be avoided by simply not asking this question about her
5 knowledge of things that predated her employment.

6 There's really no reason she should have known about
7 it because why would you need to know about your past audits of
8 a supplier when you're no longer using that supplier?

9 SPECIAL MASTER VANASKIE: It's a part of -- go ahead,
10 Daniel.

11 MR. NIGH: No, I'll let you go ahead.

12 SPECIAL MASTER VANASKIE: Yes, I'm going to allow the
13 testimony to come in. And I've gone through -- and it's
14 basically the same objection with respect to the testimony
15 through page 131.

16 MR. RAE: Your Honor, I generally agree with that, but
17 there are some subtle differences with a few of these questions
18 and answers that I would like the opportunity to speak to.

19 SPECIAL MASTER VANASKIE: Yes, let's address them
20 then. Because my inclination, so you understand, Jacob, is to
21 allow the testimony through page 131 --

22 MR. RAE: Understood.

23 SPECIAL MASTER VANASKIE: -- line 20.

24 So go ahead. Give me the subtle nuances that I need
25 to consider.

1 MR. RAE: I'll try to stick to the targeted areas
2 where there are nuances for this.

3 So at page 130, the question begins at line 10 through
4 the answer at line 18. Part of the question asks: Would you
5 have expected Torrent to conduct quality control testing of the
6 API that was contained in the products?

7 And frankly, we don't have a concern with the answer
8 here, but we -- like, actually -- sorry, I'm going to -- that's
9 not the area where I was concerned about that. We'll -- the
10 question that I'm concerned about -- I apologize, Your Honor.
11 I'm just trying to make sure that I'm organized here, and I
12 knew there was a question in here that was different.

13 SPECIAL MASTER VANASKIE: Just take your time. No
14 problem.

15 MR. RAE: At 131, line 19 through 24, there's a
16 question: Would you be surprised if Torrent never did that?

17 And this is in reference to that testimony that I was
18 just reading about conducting quality control testing. We
19 think that this question is different from the other questions
20 that Your Honor is overruling our objection to.

21 This question is incredibly prejudicial. It lacks
22 foundation in the record. Torrent did testing. Torrent tested
23 every batch of API that it received from ZHP. There's
24 testimony in the record from Dr. Jaiswal to that effect. The
25 jury is going to hear that from Dr. Jaiswal again at trial.

1 The documents -- the certificates of analysis that
2 show that Torrent did that testing are in the record, and
3 they're going to come into evidence at trial. There is no
4 basis for there to be a question asking a witness, would you be
5 surprised if Torrent never did that when all of the evidence
6 shows that Torrent did, in fact, did that thing.

7 SPECIAL MASTER VANASKIE: Daniel?

8 MR. NIGH: Your Honor, it's unclear on what the -- I
9 don't think the idea of the testing was supposed to be general
10 quality, but for that reason, we would withdraw this testimony.

11 So where did you say it started, Jacob?

12 MR. RAE: It's the question at 131, 19 to 24. And I
13 think that would logically pull out the testimony that we've
14 objected to at the top of 132 because it will just be confusing
15 without that first question.

16 MR. NIGH: Right. What part do you think it goes to?

17 SPECIAL MASTER VANASKIE: 132, line 8.

18 MR. RAE: Yes.

19 MR. NIGH: That's fine. We withdraw that testimony,
20 Your Honor.

21 SPECIAL MASTER VANASKIE: Very well. Good.

22 I think that takes us to 132, lines 14 to 18, or is
23 that already -- 132, 14 to 18, I think. I'm confused now
24 myself.

25 There's no objection there. 132 -- that's why I have

1 nothing in my notes.

2 Okay. I think we're up to page 143, line 12. Correct
3 me if I'm wrong.

4 MR. RAE: That's what I have, Your Honor.

5 SPECIAL MASTER VANASKIE: Okay. So we pick up the
6 question at page 143, line 12, and that continues to -- the
7 question continues to line 16. The answer comes in at lines 18
8 and 19.

9 So do you want to elaborate on your objection, Jacob?

10 MR. RAE: Yes, Your Honor. So I think there is a few
11 issues with the testimony here. The first one is that there's
12 a lack of foundation for this testimony in terms of the kind of
13 size and scope of the issue. There's concern related to kind
14 of the tying of and the use of the word "carcinogen," although
15 I understand that's still an issue that is largely going to be
16 resolved by Judge Bumb.

17 I don't think that this usage kind of falls outside of
18 that scope in terms of being a more heightened or acute issue
19 from an objection perspective. But I think the big issue here
20 is the questioning is targeting this idea of what Torrent did
21 on a going-forward basis to prevent this sort of problem from
22 happening again, and that's not appropriate testimony for this
23 trial.

24 This trial is about what led to the nitrosamines, the
25 NDMA and NDEA being in valsartan API. It's about the presence

1 of that API in products. It's about the warranties that were
2 given. It's about whether or not there was any fraud committed
3 with respect to communications to third-party purchasers with
4 respect to the contents of these products when they were on the
5 market.

6 It's not about what Torrent did on a going-forward
7 basis with respect to other products after this recall. And I
8 know there's other products at issue in this case and kind of
9 there may be other reasons why plaintiffs would have asked this
10 question that they may -- like, that may come back at future
11 points in this case or in losartan issues, but with respect to
12 valsartan, with respect to this trial, this question is
13 irrelevant, and it would be deeply prejudicial to put in front
14 of the jury what happened after the issues that the jury is
15 being asked to weigh and decide upon.

16 SPECIAL MASTER VANASKIE: Daniel?

17 MR. NIGH: Your Honor, just keep in mind that she came
18 into the company in September of 2018, and the NDEA problem is
19 discovered thereafter, so it is still relevant even to the NDEA
20 in valsartan.

21 MR. RAE: Your Honor, if I may respond briefly to
22 that?

23 SPECIAL MASTER VANASKIE: Yes, you may.

24 MR. RAE: As Mr. Nigh admitted earlier, the recall was
25 completed with respect to NDMA, in fact, I believe before NDEA

1 was discovered. So there was a discovery that in addition to
2 the NDMA that led to the recall of the product, there was also
3 NDEA in some of the batches of API that Torrent used, and there
4 were retrospective investigations of that. We're not disputing
5 the existence of NDEA in the batches that contained NDEA. But
6 the NDEA itself was not kind of a separate and distinct problem
7 that required action by Torrent because the action that would
8 have been necessary, recalling the product, had already taken
9 place with respect to the NDMA discovery.

10 MR. NIGH: Your Honor, the NDEA wasn't even being
11 discovered until 2018. The first one to discover it in
12 September of 2018 was the FDA. Torrent didn't take action to
13 recall the product that had NDEA until after that.

14 SPECIAL MASTER VANASKIE: I don't know what that has
15 to do with the questions presented here, but I will sustain the
16 objection.

17 The witness says: I don't know.

18 MR. NIGH: Well, she says, yes.

19 She says: In general, I -- so I guess, yes, in
20 general.

21 Do you have a -- do you have a recall -- so you have a
22 recall of the size and scope you've never seen involving
23 carcinogen in the pill that your company distributed, don't you
24 want to know how that happens so it won't happen again?

25 I guess so, yes, in general.

1 SPECIAL MASTER VANASKIE: Yes.

2 MR. NIGH: So she still has some role in the
3 investigatory response, you know, after -- even just for the
4 NDEA, let alone whatever her responses are and communications
5 are with the FDA with NDMA, it's still important because she's
6 still part of that investigative response. But for NDEA, she's
7 there when it's happening.

8 (Simultaneous speakers.)

9 SPECIAL MASTER VANASKIE: And the question: What
10 steps did Torrent take to make sure it wouldn't happen again?

11 And she says: For valsartan, I don't know.

12 MR. NIGH: Right. And that's why it's important,
13 because she's involved in the steps that are being taken and
14 she doesn't know.

15 MR. RAE: And, Your Honor, it's not important because
16 before Ms. Attinger started at Torrent, Torrent had recalled
17 all of its valsartan product. Torrent never started selling
18 valsartan product again. There was no point during
19 Ms. Attinger's employment at Torrent or since then where
20 Torrent has sold valsartan product.

21 SPECIAL MASTER VANASKIE: Yes, I will sustain the
22 objection. The testimony and questions from line 12 through --
23 lines 12 through 23 of page 143 will not come in, and the
24 answer at lines 2 through 3 of page 144 will not come in.

25 MR. RAE: Thank you, Your Honor.

1 SPECIAL MASTER VANASKIE: I think that takes us now to
2 page 177. And this is on a counter-designation and it concerns
3 attorney commentary. Lines 1 through 7 of 177.

4 You just want to take out that introductory
5 information?

6 MR. NIGH: Your Honor, just re-looking at it, I will
7 withdraw the objection. I think it's fine the way it is.

8 SPECIAL MASTER VANASKIE: Okay. And then 178, lines
9 23 through 179, line 2.

10 MR. NIGH: That, we'll withdraw.

11 SPECIAL MASTER VANASKIE: All right. I think now we
12 are at page 181, line 11.

13 MR. RAE: Your Honor --

14 SPECIAL MASTER VANASKIE: Go ahead, Jacob.

15 MR. RAE: This is a similar issue to before but
16 there's a foundation issue -- there's going to be -- this is
17 not an issue that the witness actually has personal knowledge
18 of who. We've seen that earlier in this deposition already.
19 And so they're asking questions of the witness about things
20 that she doesn't know and they're drawing "I don't know"
21 answers, and we think it's prejudicial to present that type of
22 testimony to the jury, particularly in a repetitive way,
23 because it will start -- it starts to create an impression in
24 the jury that these are things that aren't known as opposed to
25 just things that this individual witness doesn't know because

1 she didn't work on these issues. And I think this also kind of
2 ties back to the use of video testimony generally and I don't
3 want to relitigate those issues, but this type of --

4 SPECIAL MASTER VANASKIE: We're not going down that
5 road again.

6 (Simultaneous speakers.)

7 MR. RAE: Right. This type of questioning might be
8 less prejudicial in the context of live testimony where there
9 would be kind of a clear opportunity to come back in redirect
10 and kind of clarify why she doesn't know some of these things,
11 but that opportunity doesn't exist with the video testimony.

12 We think that makes it more important for the Court to
13 kind of play a gatekeeping role in potentially prejudicial
14 testimony that's pushing a witness on issues that they don't
15 know about.

16 MR. NIGH: Your Honor, we have Jaiswal's 30(b)(6)
17 testimony on this, so we will withdraw these questions.

18 SPECIAL MASTER VANASKIE: All right. So removed from
19 the transcript is the information at lines 11 through --

20 MR. NIGH: 16.

21 SPECIAL MASTER VANASKIE: -- 16. Yes, 11 through 16
22 on page 181. All right?

23 Now are we up to 187, line 15?

24 MR. NIGH: Yes.

25 MR. RAE: We are, Your Honor, yes.

1 And I -- if I should jump in, I think our main
2 objection here is the 407 objection that relates to the
3 document and it relates to the testimony that follows relating
4 to it, that this is -- line of questioning is an
5 after-the-fact -- like, it was about an after-the-fact
6 investigation that Torrent hire the consultant to conduct
7 regarding the existence of NDMA and NDEA in its products and
8 how that came to be. That's a subsequent remedial measure that
9 shouldn't be coming into evidence before the jury.

10 Rule 407 exists to encourage companies like Torrent,
11 when there's a problem, to go out and do these sorts of
12 investigations to figure out what happened, to figure out how
13 they can fix what happened without having the fear of those
14 investigations coming into evidence related to the problem that
15 was previously existing. And letting this evidence in is
16 contrary to the purpose of Rule 407, which is, again, to
17 encourage the exact kind of conduct that Torrent engaged in
18 here in conducting this investigation.

19 SPECIAL MASTER VANASKIE: Daniel?

20 MR. NIGH: Your Honor, an assessment by a consultant
21 of what went wrong after the fact is not the same as
22 introducing evidence of a subsequent remedial measure.

23 In addition to that, this formulated Torrent's -- this
24 formulated the basis of Torrent's response to FDA's
25 investigation as to what went wrong in this issue.

1 So an assessment of what went wrong is not the same as
2 a subsequent remedial measure.

3 SPECIAL MASTER VANASKIE: Yes, I agree. I think it's
4 a creative argument to say this is a subsequent remedial
5 measure; but in doing an investigation to determine what went
6 wrong I think broadens Rule 407 way beyond what it was intended
7 to cover. And, therefore, we'll allow the testimony at pages
8 181, lines 11 to 13; 181, line 16. I think this also covers
9 187, line 15 to 18; page 190, lines 20 to page 191, line 5.

10 And so that takes us to page -- correct me if I'm
11 wrong on this -- 193, line 23.

12 MR. NIGH: I think that's the same issue but I will --
13 181, lines 11 to 16, we addressed that separately. That was
14 the one that we lost on.

15 SPECIAL MASTER VANASKIE: Right. Okay. Thank you for
16 that.

17 MR. NIGH: Yes. I think this issue goes all the way
18 through from 187, line 15, to our designations in page 197,
19 line 10.

20 MR. RAE: I would agree with that, and I think we have
21 some different objections to the nature of the questions that
22 are being asked about this document that don't relate to the
23 issue that we've already discussed about why we think kind of
24 the line of questioning with respect to the subsequent remedial
25 measure, Rule 407 issue, should apply.

1 And if I may speak to those briefly, Your Honor?

2 SPECIAL MASTER VANASKIE: Yes, you certainly may.

3 MR. RAE: So I understand Your Honor's ruling that
4 kind of the investigation of what -- to the extent the
5 investigation relates to what went wrong, that is a fair area
6 for plaintiffs to be inquiring into. I think the way
7 plaintiffs are using this document and the testimony they're
8 designating is different from that. And if you look at the
9 first of the questions that they ask about, on page 190,
10 starting on line 20 --

11 SPECIAL MASTER VANASKIE: Let me get there. Okay.
12 I'm there.

13 MR. RAE: -- this is -- the question here is
14 ultimately kind of reading from the scope of the investigation
15 as it relates to acceptable daily intake levels for NDMA and
16 NDEA, and we think kind of that question I think probably
17 actually is covered by the ruling that you've already
18 established because it relates to low levels of the product.

19 Even if we jump down to 193-23 to 194-4, the question
20 there is: Is there something different between the NDMA that
21 was found in Torrent's product and the NDMA that was used to be
22 used as rocket fuel?

23 And that's content that's within the document that
24 there's some history of kind of the use of NDMA that exists
25 within the document that refers to other uses of NDMA; but we

1 think it's extremely prejudicial for plaintiffs to be asking a
2 question about those historic uses that are not tied to the
3 issues in this case, the allegations in this case, the concerns
4 that -- this isn't even tied to kind of the dispute about
5 carcinogenicity issues in this case.

6 This is an entirely different usage of NDMA that
7 plaintiffs are asking a question about presumably because the
8 idea that this product was used in connection with rocket fuel
9 will stir some emotional reaction from the jury to that fact,
10 even though it has no relevance to this case. And so we think
11 there's a huge 403 issue with this question.

12 MR. NIGH: Your Honor, we think --

13 SPECIAL MASTER VANASKIE: Daniel?

14 MR. NIGH: -- the NDMA is the central -- is very
15 central to this case. So giving the jury context of what NDMA
16 is used for is key. I mean, the only uses of NDMA were to be
17 used in rocket fuel and to inject laboratory animals to test
18 for tumors, to give them a tumor so you could test for cancer
19 treatment or to study cancer. Those are the two uses of NDMA
20 in the last 40, 50 years. So sure we can discuss here's what
21 NDMA is.

22 SPECIAL MASTER VANASKIE: Yes, I think it's not unduly
23 prejudicial and I don't think it outweighs its probative value
24 and I'll allow the question.

25 (Simultaneous speakers.)

1 SPECIAL MASTER VANASKIE: That's page 193, line 23 to
2 page 194, line 4.

3 What else do you have, Jacob?

4 MR. RAE: I think our next objections are going to
5 fall into kind of issues of the scope of general causation and
6 the carcinogenicity risk-benefit issues that would come in to
7 the extent they depart from issues that we've already
8 discussed, and so I just want to note that for the testimony
9 from 196, line 6 to 16 and -- I think, actually, to some
10 degree, 197, line 8 to 10, only because it's kind of echoing
11 and referring back to that prior testimony as I read it, those
12 would tie into that issue. But I think Your Honor's rulings so
13 far would otherwise resolve our objections to that testimony.

14 SPECIAL MASTER VANASKIE: All right. So there's no
15 need to address that issue further here, I take it?

16 MR. RAE: Correct, Your Honor.

17 SPECIAL MASTER VANASKIE: Okay. So where do we pick
18 up now? Are we up to page 235?

19 MR. RAE: We are on -- I believe we're on -- did you
20 guys -- Mr. Nigh, did you drop your other designation at 203-6
21 to 11?

22 MR. NIGH: No, it's just marking the exhibit.

23 MR. RAE: So, Your Honor, our position is similar to
24 the one we discussed earlier. This is -- there's no question
25 about this document.

1 SPECIAL MASTER VANASKIE: So you want to strike lines
2 6 to 11 on page 203?

3 MR. RAE: Correct, Your Honor.

4 SPECIAL MASTER VANASKIE: That seems to me to be
5 appropriate, since there's no ensuing question. So I'll
6 sustain your objection to that.

7 And lines 6 to 11 on 203 will be stricken, will not be
8 played for the jury.

9 And I think now we go to -- is it page 235?

10 MR. RAE: Yes, Your Honor.

11 MR. NIGH: And, Your Honor, I just -- I'm not seeing
12 anywhere where we actually do ask questions about that
13 document, but just in case we do, then we would need to
14 introduce the document. But I don't see it in the questions
15 ensuing so...

16 SPECIAL MASTER VANASKIE: Yes, I didn't see it. So,
17 obviously, if you come back and say, well, no, we did ask
18 questions, we can revisit the issue, but for now it's out.

19 MR. RAE: And we've been -- I think we started --
20 Mr. Nigh will recall -- we started with a lot of these
21 objections and we've, over time, been trying to winnow them to
22 areas where we, in good faith, do not believe that there is a
23 question being asked about the document. So I'm not
24 foreclosing that we may have, inadvertently still have an
25 objection that doesn't apply in that context.

1 In fact, I think our next one would kind of -- is
2 slightly different in that the objection applies to the usage
3 of the document generally as well, but kind of as a general
4 matter, we've tried to avoid these unless we're objecting to
5 the document coming in or there actually is no subsequent
6 question about the document.

7 SPECIAL MASTER VANASKIE: So we're up to 235, lines 2
8 to 7. This deals with Torrent Exhibit 181.

9 MR. NIGH: And this is just introducing the document
10 and we do ask questions about it later, I believe. It's right
11 below.

12 MR. RAE: Yes. And we believe that Judge Bumb has
13 excluded the questions that are being asked about this
14 document.

15 This is an FDA -- these questions are about a 483
16 warning letter that was written to Torrent in 2019 relating to
17 an FDA inspection that took place in 2019 of Torrent's
18 production facilities that has -- the inspection did not have
19 to do with valsartan, and Torrent wasn't even making valsartan
20 finished dose products anymore at the time that the inspection
21 took place.

22 Judge Bumb ruled generally that in response to joint
23 defendant's motion in limine 2 that these types of reports and
24 questions about them, if they don't have a tieback to
25 valsartan, are irrelevant. They would be confusing to the

1 jury, they would result in a minitrial within a trial about
2 whether or not there was any connectivity back to valsartan and
3 Torrent's production of valsartan about this and that it would
4 be a distraction and shouldn't come into trial.

5 She also addressed that she believes that this
6 would -- that introducing testimony like this and documents
7 like this is concerning to her from the perspective of whether
8 or not it's a character assassination. Those are her words,
9 not mine.

10 And this specific one is at the heart of -- to the
11 extent there's any disputes about the scope of that ruling,
12 Judge Bumb also explicitly ruled out the Meridan report, which
13 was the consulting investigation that Torrent did in response
14 to this 483 warning letter, and when she got to the joint
15 defendant MIL 2, which she ruled on after ruling that the
16 Meridan report was excluded, she recognized that the issue that
17 she was ruling on was the same issue as with respect to the
18 Meridan report.

19 And there's no closer or cleaner example of how it's
20 the same issue than this document and the 483 -- the 2019
21 inspection report and 483 warning letter for Torrent's
22 facilities that led to the Meridan report that she also
23 excluded.

24 MR. NIGH: Jacob, how far does this go down into? Is
25 this objection all the way to 258, line 4 from 235, line 2 to

1 258, line 4?

2 MR. RAE: I believe it does. And then I think some of
3 the objections that follow it there may be areas where it kind
4 of ties back in through page 265, line 24.

5 MR. NIGH: Okay. Your Honor, here's my suggestion. I
6 think we're getting into a point where we're going to be
7 arguing an MIL that the judge ruled on. I think you've heard
8 some of this back and forth. I don't think it's --

9 (Simultaneous speakers.)

10 SPECIAL MASTER VANASKIE: Yes.

11 MR. NIGH: -- a surprise that we believe that the
12 judge later spoke up, they're citing from the first part, and
13 the judge spoke up after that. But if it's evidence of a
14 systemic problem that we could point to it, we do believe that
15 we have evidence of a systemic problem from the 2017
16 inspection, the 2019 inspection and so forth that would cover
17 the time frames that they were selling valsartan in this plant.

18 But if I could, I would just ask -- I think we should
19 just reserve this until Monday, like we did with some for
20 Jaiswal. You know, we may revisit this and say this isn't --
21 we don't want to bring this in in this way. So we could hold
22 off on ruling on this, but we had some meet and confer, and I
23 already agreed on Jaiswal to pull this testimony. So I may
24 look at this here and do the same thing.

25 SPECIAL MASTER VANASKIE: All right. Is that fine by

1 you, Jacob?

2 MR. RAE: That's -- yeah, I'm not going to dispute the
3 proffer that they're going to -- that Mr. Nigh is going to take
4 a second look at this and that he may be pulling this, so we
5 may not have to bother Your Honor with making a ruling on this
6 issue.

7 For clarity, I just want to note that when Judge Bumb
8 spoke of the possibility of a systemic -- of use of documents
9 to show something that's systemic being potentially
10 permissible, she very clearly put the burden on plaintiffs to
11 go back to Judge Bumb and explain to her how any document that
12 would fall into this category would support use to show a
13 systemic violation before it could come into evidence.

14 And so we think in the absence of them having done
15 that, her motion in limine rulings bind the parties and Your
16 Honor that this testimony would not be admissible. But, again,
17 I don't think we need to address that now because it sounds
18 like there may be a possibility that this dispute won't need to
19 be resolved by Your Honor.

20 SPECIAL MASTER VANASKIE: All right. Very well. So
21 let's be clear on what's being reserved. So we're talking
22 about -- let me see, I have to go back and look at the
23 transcript -- the testimony, objections and questions, answers
24 from page 235 through 265.

25 Do I have that right?

1 MR. NIGH: I think it's 258, line 4.

2 SPECIAL MASTER VANASKIE: Okay.

3 MR. NIGH: And then there may be one or two other
4 questions that Jacob said this still ties to.

5 MR. RAE: Yes, I would agree with that, Your Honor. I
6 think the rest of the questions through the end are kind of
7 grounded in the same examination, but some of them do ask
8 questions that are not kind of fully grounded in the document
9 such that they might be able to stand up on their own, and we
10 have objections to those questions too.

11 But depending on the approach that plaintiffs want to
12 take here, we're okay kind of addressing those as objections to
13 testimony that doesn't require use of the document and,
14 therefore, may be outside the scope of the motion in limine
15 ruling.

16 SPECIAL MASTER VANASKIE: So let me ask counsel, what
17 is each of your understandings as to what we are reserving?

18 MR. NIGH: Actually, Your Honor, I would probably just
19 ask to go through to 265, line 11 because I think it is closely
20 tied to this document.

21 SPECIAL MASTER VANASKIE: Okay. So -- and it starts
22 at where?

23 MR. NIGH: 235, line 2.

24 SPECIAL MASTER VANASKIE: Okay.

25 MR. NIGH: Yeah, I mean, if we're going to make the

1 decision to pull the other, I don't think we would leave these
2 questions in between there anyways.

3 SPECIAL MASTER VANASKIE: Okay. And is that
4 acceptable to you, Jacob, in terms of what we're reserving on?

5 MR. RAE: Yes, it is, Your Honor. And I didn't want
6 to kind of force Mr. Nigh into that position, because I know
7 kind of the testimony becomes a little bit different in a few
8 spots. But I think that's an appropriate way to approach it
9 for now and --

10 SPECIAL MASTER VANASKIE: Okay.

11 MR. NIGH: In fact, just to clear it up, it actually
12 goes through all the rest of what we have for Bernadette
13 Attinger, I believe it's through to 265, line 24.

14 SPECIAL MASTER VANASKIE: That would be it, right?
15 265, line 24 is the end?

16 MR. NIGH: Yes.

17 SPECIAL MASTER VANASKIE: So we've reserved ruling on
18 that. You have the rulings with the other parts of
19 Ms. Attinger's testimony. And we'll proceed to Dawn Chitty.

20 I would like to take a ten-minute break at this time.

21 MR. NIGH: Thank you, Your Honor.

22 SPECIAL MASTER VANASKIE: All right. We'll resume at
23 10:35.

24 (Brief recess taken from 10:25 a.m. to 10:37 a.m.)

25 SPECIAL MASTER VANASKIE: All right. I'm back.

1 Daniel, are you there?

2 MR. NIGH: Yes, Your Honor.

3 (Discussion held off the record.)

4 SPECIAL MASTER VANASKIE: All right. So I think we
5 can resume then. We're going to pick up with Dawn Chitty. And
6 I have -- I guess the first area of concern is with the
7 counter-designation and whether the response at lines 4 to 7 on
8 page 25 -- lines 4 to 7 is the question.

9 MR. NIGH: Your Honor, if I may?

10 SPECIAL MASTER VANASKIE: Yes, go ahead.

11 MR. NIGH: Your Honor, if I may, we're going to
12 withdraw 25, line 4 to 7, and 25, line 10 to 16.

13 SPECIAL MASTER VANASKIE: Okay. Good.

14 MR. NIGH: We're going to withdraw our objection, I
15 mean.

16 SPECIAL MASTER VANASKIE: All right. So do we pick up
17 now on page 26, lines 10 through page 27, line 8, Jacob?

18 MR. RAE: Yes, Your Honor, I think that's correct.
19 And our objection here is in the initial instance kind of
20 starting at line 10 and then we have some additional objections
21 that get layered in. But this is just a document for which
22 there's no foundation to be asking this witness, who is not a
23 30(b)(6) witness, she's testifying based on her own personal
24 knowledge.

25 The question starting at 26-5 to 9, plaintiffs

1 introduce the document, they ask her: Have you seen this
2 before?

3 She answers: Not that I recall.

4 That should be the end of the questioning of this
5 witness about this document.

6 And the questioning goes on. The next question is a
7 question about the content of the document.

8 And the witness answers, "I'm not sure," because she
9 doesn't have any personal knowledge of this document. And
10 we're going to see that throughout kind of the upcoming line of
11 questioning, that -- Rule 602 does not permit asking witnesses
12 who are testifying in their personal capacity about documents
13 that they have no personal knowledge of.

14 SPECIAL MASTER VANASKIE: Daniel?

15 MR. NIGH: Your Honor, I believe that that's a little
16 truncated on that rule, frankly, because there's a lot of other
17 purposes as to how documents come in. The very fact that she
18 doesn't have knowledge of this document and the statements that
19 are within it are what make it relevant. Dawn Chitty is one of
20 the quintessential people in the corporation that's interfacing
21 both with the FDA, interfacing with the company, she's asking
22 all sorts of safety questions, she's involved in the safety of
23 the drug clearly, and we can -- and she's in numerous documents
24 that are the most important documents that we are using in this
25 case. And she's one of the people who over and over and over

1 again is asking why they haven't developed a test to actually
2 test for whether or not there's NDMA in the product. So to get
3 a true understanding of her knowledge is very important.

4 But then I would also point above, which is what we
5 just allowed in the -- the defendants wanted to add 25, lines 4
6 to 7 and then 25, lines 10 to 16. You know, the question there
7 was -- and it's up to the manufacturers to -- she said -- her
8 answer -- sorry -- she says: "I think the timing of this
9 information is somewhat -- somewhat critical. That web page is
10 dated from 2011, not at the time we were initially making
11 decisions related to the recalls," as if there's, you know --
12 at that point, you know, that's related to what are the
13 regulations regarding nitrosamines.

14 And, you know, here she's saying, well, those were
15 regulations later, not at the time of the recall, not at the
16 time that the product is on the market.

17 So then we get to really get into her knowledge, what
18 is her knowledge of what's allowed at the time these products
19 are on the market. And part of that is understanding NDMA and
20 understanding what has been known about this carcinogen,
21 because in order to tie in genotoxic statements that are the
22 regulatory requirements, you needed to understand the genotoxic
23 substance.

24 MR. RAE: And, Your Honor, if I may briefly?

25 SPECIAL MASTER VANASKIE: You may.

1 MR. RAE: To be clear, we're not objecting and we
2 haven't objected to the testimony to establish that the witness
3 doesn't know about this document. And Your Honor previously
4 overruled objections to Dr. Jaiswal, who is testifying in a
5 30(b)(6) capacity, about -- I'm not sure if it was this
6 specific document but about similar lines of questioning with
7 respect to Torrent's knowledge.

8 We think it's very different -- and plaintiffs are
9 obviously free to make arguments to the extent this document
10 comes -- otherwise comes into evidence through someone who can
11 put it into evidence -- about what Ms. Chitty should have known
12 from this document that she does not have personal knowledge
13 of. That's a different issue. But questioning her about the
14 document that she lacks personal knowledge of is improper.

15 MR. NIGH: I think what we will see is that we are
16 questioning her about information within the document, and then
17 when we are asking her thereafter is she aware of that
18 information. And some of it, she is aware of it. Even though
19 she's not aware of the document itself, she's aware of the
20 information that's contained within the document.

21 MR. RAE: Your Honor, we're happy to talk about -- if
22 there are examples of that, I think that may be a different
23 type of testimony. And we've tried to kind of draw reasonable
24 lines in our objections precisely to accommodate issues like
25 this.

1 But the question that we're looking at here is about
2 what the document says. The answer following the witness
3 saying that she can't recall ever seeing this document before
4 is that she's not sure. And then she testifies that she
5 believes that's what the content of the document stands for,
6 again kind of reinforcing that she doesn't actually know the
7 content of this document that she's being asked to testify
8 about.

9 SPECIAL MASTER VANASKIE: I'm sorry. I'm looking back
10 at the testimony.

11 So if we go to page 30, lines 5 really through 19,
12 she's asked, the last sentence says: NDMA is a genotoxic
13 carcinogenic, and exposure will be reduced to the extent
14 possible. Do you see that?

15 Yes.

16 So exposure should be reduced to the extent possible,
17 that means try to expose people to it as little as possible?
18 Right?

19 There's an objection to form, and an answer: It means
20 what it says, reduce to the extent possible.

21 So I don't think it requires -- that excerpt that I
22 just read would require great familiarity with this document as
23 a whole. It seems to me that question could be asked and
24 answered.

25 So I'm going to overrule the objections that are --

1 unless you point out one that requires separate treatment,
2 Jacob, I would allow the testimony from page 26, lines 10
3 through page 27, line 8; the testimony at page 27, line 17 to
4 line 24; 28, line 3 to 28, line 9; 28, line 12 to line 15; 30,
5 line 5 to 30, line 14; and 30, lines 17 to 19.

6 Now can we go to page 42, picking up on line 24, so
7 the very bottom of page 42.

8 MR. RAE: Yes, Your Honor. And I believe our
9 objection in this section begins -- is just to the question at
10 43, 19 to 20.

11 SPECIAL MASTER VANASKIE: Okay. And this is just
12 they've gone through and pulled out information in terms of the
13 levels that have been detected and making the point that it's
14 multiples of the allowable limit, I take it?

15 MR. RAE: Correct. And to be clear, Your Honor, we're
16 not objecting to the testimony that establishes what the levels
17 of NDMA were in this document, we're not objecting to the
18 testimony about what the subsequently established FDA limit for
19 those levels were, but I think the question of "63.4 is
20 significantly more than .3, right," is an unfairly prejudicial
21 question, and it's an improper, abstracted, vague question,
22 because significantly more is a context-dependent inquiry.
23 There needs to be a source of measurement for whether or not
24 something is significantly more.

25 And just to use the numbers here -- like, if you're

1 measuring -- if the kind of -- if you're talking about
2 something, like, where the reasonable framework is in millions,
3 then 63.4 isn't necessarily that much more than 0.3. If you're
4 talking -- like, depending on context, the relationship between
5 numbers and whether or not it's significantly more or a small
6 amount more is different in, like, that's really the province
7 of the jury to decide the relationship of these things.

8 And that's why this question -- obviously the witness
9 answers 63.4 is higher than 0.3, because that's the scope of
10 what is a reasonable thing for this witness to be commenting on
11 from her personal knowledge as someone who is not a chemist or
12 a toxicologist. But even this testimony is cumulative to the
13 extent it kind of just stands for the witness's answer there,
14 because we've already established 63.4 is the level, we've
15 already established 0.3 is the limit. And, frankly, the jury
16 doesn't need to hear someone tell them that 63.4 is higher than
17 0.3.

18 MR. NIGH: If the objection is only to page 43, lines
19 19 to 24, we would withdraw that. I think the questions that
20 are designated after are fine.

21 SPECIAL MASTER VANASKIE: All right. So 63, lines 19
22 to 24, the testimony at page 63, lines 19 to 24 is out.

23 MR. NIGH: And then, Your Honor, I think then we would
24 designate page 44, lines 5 to 7, because it sounds like he
25 wanted a mathematical as opposed to significantly more.

1 And that's more than a hundred times the limit, right?

2 And the answer is: Yes.

3 SPECIAL MASTER VANASKIE: Jacob?

4 MR. RAE: I think that testimony is going to be
5 cumulative of other issues later on, and we're going to have
6 some cumulative objections related to these types of questions.
7 But in this specific instance, I have no objection to that.

8 SPECIAL MASTER VANASKIE: Yes, I will allow it. So
9 lines 5 through 7 on page 44 are in.

10 Where does that take us now?

11 MR. RAE: I think we have an objection on 46-12 to
12 46-20, but I'm willing to stipulate that you're going to
13 overrule that objection to have things move on.

14 SPECIAL MASTER VANASKIE: Yes, yes. I've looked at
15 this, and I would allow that testimony.

16 So the objections on page 46 are overruled, and lines
17 12 through page 67, line 2 -- I'm sorry. 46, lines 12 through
18 20 are in. All right?

19 MR. RAE: Yes, Your Honor. And then our next
20 objection, which is one of these ones that comes into a block
21 of testimony, to be clear, starts at page 60, line 24 and then
22 runs through the questioning on 61, line 18.

23 SPECIAL MASTER VANASKIE: So you have the witness use
24 a calculator and provide numbers.

25 Go ahead, Daniel.

1 MR. NIGH: Just to be clear, what we were looking at
2 before was NDMA, now we switched attention to NDEA, just so
3 Your Honor understands --

4 SPECIAL MASTER VANASKIE: Yes, NDEA.

5 MR. RAE: And, Your Honor, our objection here --
6 sorry, I didn't mean to interrupt Mr. Nigh.

7 SPECIAL MASTER VANASKIE: Go ahead.

8 MR. RAE: Our objection here is really a
9 cumulativeness objection that we do not object, as I pointed
10 out, to the initial line of this questioning from page 60,
11 line 3 to 60, line 23 where plaintiffs go through one example,
12 do the math with Dawn Chitty, show the amount that the levels
13 are higher; but I don't think there's any reason why the jury
14 needs to see Ms. Chitty be a human calculator for -- after
15 seeing that 14.13 divided by .083 is, I guess, 170 times --
16 comes to 170, to also do that with 15.29, with 13.93, with
17 16.93, with 15.29. Like, those are all pretty similar numbers.
18 The jury doesn't need to hear the math done over and over and
19 over again.

20 SPECIAL MASTER VANASKIE: No, I will allow it. So the
21 objection is overruled.

22 And the testimony -- just trying to be precise here --
23 on page 60, line 15 to page 61, line 18; and page 62, line 1 to
24 62, line 16 will be in, is admissible.

25 And I think now we're at page 69, line 22. Do you

1 agree?

2 MR. RAE: Yes, Your Honor, I agree.

3 SPECIAL MASTER VANASKIE: All right.

4 MR. RAE: And, Your Honor, the objection that we have
5 stated here is there's a foundation objection, there's also a
6 401 and a 403 objection, and this kind of has a form problem in
7 that it assumes facts not in evidence. And they all tie to the
8 same thing, which is an issue that Judge Bumb already decided
9 in a motion in limine, which is -- and we talked about this
10 before.

11 There's an email in this case from, I believe, 2015
12 where someone at Torrent, someone who's not Ms. Chitty, refers
13 to the sourcing of cheaper Chinese API in respect to some
14 Torrent communications about their ability to kind of compete
15 on pricing for a Walmart contract. And this -- Judge Bumb
16 ruled that references to cheaper Chinese API are admissible but
17 discussion of cheap Chinese API, which plaintiffs asked many of
18 our witnesses about and has a different connotation and
19 meaning, is not permissible. And that's what's going on here.

20 The question is: We can agree that Torrent wanted to
21 find a cheap API product.

22 There's no foundation for that assumption, for that
23 question. It's irrelevant and unduly prejudicial in the exact
24 same ways that Judge Bumb addressed with respect to the email
25 itself. And it also, on top of that, lacks foundation, because

1 there's nothing to support Torrent wanting to find a cheap API
2 product.

3 To the extent that email stands for anything, it's in
4 reference to the existence of a cheaper API product, which is a
5 different meaning and statement.

6 MR. NIGH: So, Judge, I would -- this is the
7 quintessential example of giving an inch, take a mile. That
8 ruling is very clear. It's very limited. And Judge Bumb made
9 it very clear at the very end when I asked a clarification
10 question, and she said, you cannot misquote the email. That's
11 it.

12 So now we're not -- the email is not even brought up
13 here. It's just asking, you're trying to find cheap Chinese
14 API. That's it. There's no quote of anything. The email is
15 not here. And so to try to say this has been ruled upon, it
16 has not. There's no quoting of an email. It's just a question
17 to her, and she answers it in a way that provides context to
18 the question.

19 MR. RAE: Your Honor, respectfully, what Judge Bumb
20 said is if the email says cheaper, cheaper is what comes in in
21 front of the jury. And this is not cheaper, this is cheap, and
22 that's what she excluded.

23 MR. NIGH: And, Your Honor, right after she said that,
24 I asked, Judge -- and she came back and she said, no, I mean
25 you can't misquote the email. We're not even quoting an email

1 here.

2 SPECIAL MASTER VANASKIE: You're characterizing the
3 email, though, are you not?

4 MR. NIGH: No. There's no email.

5 SPECIAL MASTER VANASKIE: So the question is: We can
6 agree that Torrent wanted to find a cheap API product, right?

7 The answer is: We're always looking for multiple
8 sources of API prices, not necessarily always the main driver.

9 And then you talk about an email from December of
10 2006.

11 MR. RAE: And to be clear, Your Honor, our objection
12 to the testimony beginning on line 9 of page 70 is a different
13 objection because it's transitioning to a different topic
14 there. So currently we're, I think, just discussing the
15 objection on 69-22 to 70-7.

16 SPECIAL MASTER VANASKIE: 70, line 7. Yes, I'll
17 overrule the objection and allow this to come in. I don't
18 think it runs afoul of Judge Bumb's ruling.

19 Now, you have an objection to the question starting at
20 line 9. I'm getting confused here.

21 MR. RAE: Yes, Your Honor. So it's 70, line 9 to 70,
22 line 16. This is an email from 2006 that Ms. Chitty is being
23 asked about, and no foundation is laid for asking Ms. Chitty
24 about this email. The reality is that Ms. Chitty wasn't a
25 recipient or a sender on this email. There's no tie to

1 Ms. Chitty. And plaintiffs' questioning kind of skips over the
2 necessary laying of foundation here and just starts to ask her
3 about the content of the email.

4 And, again, we don't think that it's appropriate for a
5 witness to be asked about the content of emails that the
6 witness has never seen before, that there's no foundation
7 indicating that the witness has personal knowledge of.

8 SPECIAL MASTER VANASKIE: Daniel?

9 MR. NIGH: Your Honor, she even mentions it, and
10 page 72, as we skip ahead -- I am sorry, her testimony, as we
11 skip ahead, she's going to see -- you're going to see that she
12 is involved in this, and her role is involved in securing a
13 second source, which is precisely what happens here. It is the
14 second source of API that's procured, ultimately becomes the
15 only source to choose for the API that's sold in the U.S., so
16 she's involved in this issue.

17 MR. RAE: And, Your Honor, we'd agree that there is
18 testimony later on that this witness had involvement in things
19 other than this email related to developing potential
20 additional sources for valsartan API. She gave answers that
21 indicated that. That presented an opening for plaintiffs, if
22 they wanted to, to ask her questions about the foundation that
23 she had laid for inquiring into her role in that.

24 That's not the testimony that they're designating
25 here. I'm not sure that they actually have that testimony that

1 would have a foundation because they didn't ask those questions
2 for the most part. But if they had established foundation --
3 if they established personal knowledge and then pursued the
4 line of questioning based on that, we wouldn't be making this
5 objection.

6 And to point to later areas where she talks about
7 general involvement in an area adjacent to the topic of this
8 email, that doesn't establish personal knowledge of the email
9 itself.

10 SPECIAL MASTER VANASKIE: Yes. This is dated 2006,
11 long before she's ever on the scene, I take it, right?

12 MR. NIGH: She is working there in 2006.

13 MR. RAE: I would agree with that. I think --

14 SPECIAL MASTER VANASKIE: All right. Those years
15 before Torrent put valsartan on the market, that's what the
16 testimony is?

17 MR. NIGH: It is, but keep in mind, this is the
18 beginning of how they get the API, that becomes the API that's
19 in the product that Torrent's putting on the market.

20 MR. RAE: And to be clear, Your Honor, this is in
21 2006. Torrent began qualifying ZHP as an API supplier in 2009
22 and first began selling valsartan product using ZHP's API in
23 2015.

24 MR. NIGH: And just to be clear, Your Honor, I think
25 we've established this both -- through Jaiswal's testimony.

1 We'll establish it multiple other ways. These things do take
2 time. So when you're putting a product on the market, you're
3 securing your suppliers, and you're strategizing and doing your
4 business development as to how you're going to do this.

5 It does start from something like 2006, which is
6 precisely what we're seeing here. 2009, now all of a sudden
7 they're qualifying the supplier, and then -- a time frame
8 thereafter, and then they're putting it on the market
9 thereafter.

10 So this is the beginning of that. If the defendants
11 wanted to come back and say, oh, no, this has nothing to do
12 with it, they've had their ability to put that evidence on, but
13 we have connected the dots.

14 SPECIAL MASTER VANASKIE: Yes, but I'm not sure if
15 you're using the right witness to connect the dots here.

16 MR. NIGH: She's --

17 MR. RAE: Your Honor, I would --

18 MR. NIGH: My point to that is she's -- one of her
19 roles was to secure the second source of API, and so -- and
20 we've established that in the questions here too. So this is
21 the second source of API that ultimately becomes the only
22 source of API in the U.S.

23 So her role, while it's not the most of the major
24 roles in the whole chain, her role does connect one link in the
25 chain, and that's why it's important in terms of showing this

1 email to her.

2 MR. RAE: Your Honor --

3 SPECIAL MASTER VANASKIE: Go ahead. You can try to
4 dissuade me.

5 MR. RAE: Again, there's questioning of Ms. Chitty
6 about her role in securing -- she testifies that she had -- "My
7 interaction with this team mostly focuses" -- this is at
8 line 72, lines 3 to 10, her answer to a question implying
9 that -- based on the content of the email, that this sourcing
10 decision related to cost reduction.

11 And Ms. Chitty answers -- and this is not designated
12 by plaintiffs -- "my interaction with this team mostly focused
13 more around developing a second source, which was a risk
14 minimization step in manufacturing; in case something happens
15 to one of your sources, that you have a second source."

16 And so undeniably, Ms. Chitty had an involvement in
17 issues related to developing a second source of valsartan API
18 supply that she has testified to on the record at her
19 deposition, but she doesn't have personal knowledge of this
20 email. The questions are not about her personal knowledge or
21 her involvement. They're simply questions of here is what this
22 email that you are not -- that you didn't receive, that you
23 didn't send, that there's no establishment that you've ever
24 seen before this deposition, what does it say?

25 And if plaintiffs -- I think Your Honor has overruled

1 our objections to this email coming in through Dr. Jaiswal.
2 This email's going to be in evidence. I think presumably we'll
3 be able to talk about this email. But putting it in through a
4 witness who doesn't know about it, who has no opportunity to
5 contextualize it is not proper.

6 SPECIAL MASTER VANASKIE: Well, I disagree, and I will
7 allow the testimony at pages -- page 70 -- we've already talked
8 about page 70 -- page 71, lines 12 through 16.

9 What are we up to now?

10 MR. RAE: We are at 74, lines 10 to 19, and then lines
11 20 to 23, I believe. But there's a couple of different
12 questions and answers that have slightly different issues.

13 So 74, line 10 to 17 is the next question and answer.

14 SPECIAL MASTER VANASKIE: Okay.

15 MR. RAE: And, Your Honor, our objection here is it's
16 a similar foundation issue. If you look at line 74, 4 to 9,
17 plaintiffs' counsel introduces this email as: "Okay. You're
18 not on this email, but have you ever -- we can zoom out and
19 show her the whole thing. Have you ever seen this before?"

20 And Ms. Chitty answers: "I don't recall."

21 And then the question proceeds to ask her about the
22 content of that email. And I think we also made 401 and 403
23 objections, but we would concede that, in light of Judge Bumb's
24 ruling on our motion in limine with respect to cheaper Chinese
25 API, that this question and answer here does not run afoul of

1 that ruling.

2 And so our objection here is truly a foundation
3 objection of, again, it is not proper to present a witness with
4 a document that they've never seen before, that they could not
5 themselves bring into evidence and to ask them to read the
6 content -- and to have plaintiffs' counsel read the content of
7 that document into the record and say, "Do you see that?"

8 There's no knowledge or useful testimony being
9 provided to the jury there. It's simply plaintiffs' counsel
10 reading the document and the witness confirming what the
11 content of the document is, content that the witness doesn't
12 independently know about.

13 SPECIAL MASTER VANASKIE: So you're asking to preclude
14 the information on page 75, from lines 10 through 16?

15 MR. RAE: I think we're at page 74, line 10
16 through 17. Really the rest of the testimony on 74, because
17 the next question and answer is similar but is asking the
18 plaintiff(Sic) to comment on what this email that she has never
19 seen before references, and she's saying that she's not sure
20 and then speculates that she believes it may be referencing
21 ZHP.

22 And, again, this highlights the problem with having a
23 witness get asked questions about a document for which there's
24 not foundation. Now, I don't think there's ultimately going to
25 be an issue of fact here about whether or not this document is

1 referencing -- like, what Chinese API supplier this document is
2 referencing, but Ms. Chitty's speculation should not be the
3 source of that information to the jury.

4 SPECIAL MASTER VANASKIE: Yes, I agree. I'll sustain
5 the objection.

6 So I preclude the questions and testimony from
7 page 73, line 24 through 74, line 24.

8 MR. RAE: Thank you, Your Honor.

9 And I think we would withdraw our objection on page 75
10 to lines 2 to 4. I think --

11 SPECIAL MASTER VANASKIE: All right.

12 MR. RAE: I think once you get past that, the rest of
13 the objections on this page are similar, that it's asking the
14 witness to comment on and speculate as to the contents of this
15 email where she wasn't a recipient of it. It's kind of asking
16 what the U.S. CEO is telling his salespeople in this email.

17 Again, she doesn't know, and she kind of is answering
18 purely based on the content of the email. The objection at 75,
19 2 to 4 is different because Ms. Chitty obviously is more than
20 capable of answering the question, who is Sanjay Gupta, and
21 testifying that he's the CEO of the U.S. company at that time,
22 and that question does not require the use of the email.

23 SPECIAL MASTER VANASKIE: All right. So to be
24 consistent, I'm precluding the questioning and answer on
25 page 75 from lines 10 through 16.

1 Now we pick up with the question at line 17. And what
2 is your objection there?

3 MR. RAE: The objection there is that this is
4 argumentative and is a Rule 403 issue that -- "you're familiar
5 with the idea that you get what you pay for? Have you ever
6 heard that before?" -- that's not fact testimony. It doesn't
7 tie back to the issues in this case. It's trying to use a
8 common phrase to imply that the use --

9 (Audio interruption.)

10 (Court reporter interruption.)

11 MR. RAE: The question here is: Ms. Chitty, you're
12 familiar with the idea that you get what you pay for? Have you
13 ever heard that before?

14 And our position is that that question is unduly
15 prejudicial and argumentative, and the prejudice comes from the
16 idea of importing this phrase in this question that implies
17 that using and sourcing a cheaper product necessarily should
18 mean that it is lower quality, and that's a fact issue that the
19 jury is going to be asked about in this case. It's a fact
20 question that's legitimate to put in front of the jury.

21 But asking the jury to draw conclusions on it based on
22 an aphorism rather than actual facts is improper and
23 prejudicial.

24 SPECIAL MASTER VANASKIE: All right. Daniel?

25 MR. NIGH: I believe that's totally fair game. And I

1 don't think I want to belabor the argument because I think the
2 words are pretty clear. Your Honor will probably have an
3 impression one way or the other.

4 SPECIAL MASTER VANASKIE: Yes, I'll sustain the
5 objection. Certainly it's an argument you can make to the
6 jury. I just don't think it's proper examination of this
7 witness.

8 And so I will preclude the questions and answers from
9 page 75, line 17 through 76, line 7.

10 And now I think we're to page 83, starting at line 9.

11 MR. RAE: Agreed, Your Honor.

12 So we objected on 403, 602, 701 grounds and also the
13 lack of foundation, and this is a different foundation issue
14 from the one we've been discussing.

15 This issue is -- taking a step back. Dawn Chitty is a
16 VP of regulatory affairs at Torrent. Regulatory affairs
17 departments handle -- and this is true of -- essentially all
18 pharmaceutical companies are structured this way, although I'm
19 speaking specifically about Torrent here.

20 The regulatory affairs department handles
21 communication with the regulators, communicates with the FDA.
22 It acts as a liaison for other departments in the company in
23 respect to its communications with the FDA.

24 And then there are other departments -- like at
25 Torrent, the quality department, which contains both the

1 quality control and the quality assurance subgroups that
2 handles the actual managing of quality issues, which includes
3 auditing and inspecting of API suppliers.

4 And so the questioning here is asking Ms. Chitty about
5 what is involved in conducting an inspection and what's
6 important to do when conducting an inspection of an API
7 supplier. And that's a question that's outside of the personal
8 knowledge and information, the experience, the training, all of
9 those things of Ms. Chitty. And her answer reflects that.

10 Her answer is: I would assume so.

11 She would assume so because she doesn't actually know.
12 And these questions -- again, Dr. Jaiswal, who we talked about
13 at length on Tuesday, is the director of quality at Torrent.
14 Plaintiffs have opportunities to present testimony about what
15 quality requirements are. There's also going to be CGMP
16 experts in this case on both sides that will testify to these
17 issues and what goes into conducting an inspection or an audit.

18 Ms. Chitty is not an expert in this space, she doesn't
19 have the ability to be opining on what the requirements are in
20 this space, and it's improper to be putting testimony from her
21 about these issues in front of the jury. It should be coming
22 in through other sources.

23 SPECIAL MASTER VANASKIE: Daniel?

24 MR. NIGH: Your Honor, I think it kind of shortcuts a
25 little bit of Dawn Chitty's role specifically. You know, she

1 even states previously that she's involved with safety and
2 compliance. You know, she's asking all sorts of questions that
3 have to do with quality of the drug, safety of the drug. You
4 know, she's not just a mouthpiece for the company that echos
5 what other people are telling her. She carries a higher role
6 than that.

7 So to the extent that, you know, yes, she was replaced
8 by Bernadette Attinger, which is the one we just had who -- I
9 think they had more arguments to this degree. But Dawn Chitty
10 has been at the company for a very long time and doesn't just
11 wear the hat of mouthpiece for the company to convey
12 information to the FDA. She wears more hats than that, and
13 that's established through this testimony.

14 SPECIAL MASTER VANASKIE: Yes, this is just basic
15 information, though, that I think you could establish through
16 almost any witness, so I'll sustain the objection.

17 And excluded is the question that starts on page 83,
18 line 19 and the testimony that concludes on page 84 at line 10.

19 MR. NIGH: I am sorry, Your Honor, I don't know why it
20 would be sustained if it can be established through any witness
21 including this one?

22 SPECIAL MASTER VANASKIE: Well, I understand your
23 point, but she's saying I assume so. She's not testifying...

24 MR. NIGH: I guess I think of that as a distinction
25 that doesn't exist between "I assume so" and "yes."

1 "I assume so" is taking all of her background and
2 experience in the company, and as a result, she assumes the
3 answer is yes. And the jury gets to weigh that and see -- if
4 they view it some other way, they can. But I think it's
5 definitely credible to look at it and say, I assume so means
6 yes.

7 SPECIAL MASTER VANASKIE: Well, I'll reverse myself
8 then. I think this is much ado about very little. I don't
9 know that this deserves this much controversy around it,
10 whether it comes in through Ms. Chitty or somebody else, but
11 I'll -- I will overrule the objection. I'll allow the
12 testimony.

13 So the question on page 83, line 19, and finish --
14 completing with the -- concluding with the answer at page 84,
15 line 10 will be in.

16 MR. NIGH: Okay. And I think part of the issue is we
17 did choose to do this through her. It really isn't a lot of
18 cumulative. This is the witness that we chose to do this with.

19 SPECIAL MASTER VANASKIE: All right.

20 MR. RAE: And, Your Honor, just to be clear, whether
21 or not plaintiffs made the choice to pursue a line of
22 questioning with a witness who doesn't have knowledge of it and
23 therefore lack testimony to support their case is a problem of
24 plaintiffs' own making.

25 They deposed Dr. Jaiswal, Torrent's director of

1 quality, for three days. Dr. Jaiswal is showing up live at
2 trial as well. So the idea that they wouldn't be able to ask
3 questions about this issue, which is at the core of
4 Dr. Jaiswal's job responsibilities, and that they would be
5 prejudiced if it doesn't come in, is unreasonable.

6 SPECIAL MASTER VANASKIE: I've made my ruling. I'm
7 not going to replot this ground yet again. It seems to me to
8 be a fairly non-controversial matter, and it can come in
9 through Ms. Chitty.

10 MR. RAE: Agreed, Your Honor. And I wasn't trying to
11 revisit the ruling. I just wanted to make sure I was
12 responding to what I think is an improper insinuation by
13 plaintiffs that if they chose to try to make their case through
14 a witness that can't testify to it, that that somehow absolves
15 them of the lack of foundation for their questions.

16 MR. NIGH: And that wasn't my --

17 SPECIAL MASTER VANASKIE: Let's move on.

18 Is the next area page 92, line 4 -- sorry, 91,
19 line 22?

20 MR. NIGH: I believe so.

21 MR. RAE: I think we have a counter to the testimony
22 just before that. I'm not sure if plaintiffs --

23 (Simultaneous speakers.)

24 SPECIAL MASTER VANASKIE: 91, line 8 to 19.

25 MR. NIGH: I suppose -- you know, our biggest issue

1 was on that question, she even says she doesn't have any
2 background on that specific situation, so that's why we
3 withdrew it. But if the defendants want to -- if Torrent wants
4 to have it back in, we really don't have much quarrel on this.

5 We just look at this as a -- if we're going to talk
6 about what this witness can and can't testify to, that seemed
7 to be quintessential of what she can't testify to.

8 MR. RAE: And, Your Honor, I agree fully with Mr. Nigh
9 that this is illustrating that this is quintessentially
10 something that she can't testify to, and that's a perfect segue
11 to our objection to the question at 91-22 to 92, line 12.

12 MR. NIGH: But it's not because she's very specific to
13 this one question where she answers in that way. The rest of
14 it, she does not. We start to draw upon her experience and
15 being in this role for a long period of time.

16 MR. RAE: Your Honor, the distinction is just they
17 shifted from asking about Torrent's actual factual training
18 experience -- like, past procedures, which she says this isn't
19 something I was involved in from a decision-making perspective
20 or on a day-to-day standpoint, so I don't really have any
21 background on the specific situation.

22 The next question just abstracted that to -- from a
23 common sense standpoint. And so the reason she's able to
24 answer that question is precisely the reason why it's improper.
25 It's no longer a fact question. It's asking her to opine, in

1 violation of Rule 701, on an area that she doesn't have
2 personal knowledge of that's not something that was part of her
3 regular job responsibilities.

4 And I think our position is this testimony should not
5 come in, our counter should come out, their subsequent
6 designation should come out because it is correct that both of
7 these illustrate and are in areas where Ms. Chitty is not the
8 right witness to be testifying. But if their designation comes
9 in, our counter should surely come in to explain to the jury
10 and contextualize that she doesn't actually know about this
11 issue.

12 And that's -- in contrast, the questions that lead
13 into this are about things that the FDA observed in an
14 inspection report and a 483 warning letter. I think in this
15 case, the inspection report with respect to Torrent. Those are
16 FDA communications that's within the scope of Dawn Chitty's job
17 responsibilities and are perfectly appropriate questions, which
18 is why we didn't object to them.

19 MR. NIGH: And, Your Honor, if I may, just one last
20 thing.

21 SPECIAL MASTER VANASKIE: Go ahead.

22 MR. NIGH: The question that the defendants are trying
23 to designate is much different than the questions we ask later,
24 after that. And so the one question is talking about one
25 specific issue, and she says, "I don't know. I didn't know

1 that specific issue."

2 So then we go to her broad pad of her experience and
3 training, and she answers the question. She knows the answers.
4 And she answers them in the way that would even be the speak of
5 the Torrent company as to what they should be doing.

6 She even modifies the question to some degree and
7 says, Well, I wouldn't call it that, but I would say this,
8 this, this, this. So clearly, she has information that is
9 relevant to the question.

10 SPECIAL MASTER VANASKIE: I think the only thing I can
11 do here is to allow both, the counter-designation and the -- so
12 in will be the questions and answers on page 91, from line 8 to
13 page 92, line 10.

14 MR. NIGH: And I think that the next two are under the
15 same guise, the 93-9 to 11 and 93-14 to 95-2.

16 MR. RAE: And --

17 SPECIAL MASTER VANASKIE: Go ahead, Jacob.

18 MR. RAE: Your Honor, I just want to explain our
19 objection here because I think it ties to what we were talking
20 about before, and I agree that much of what we were talking
21 about but there's a subtle difference here in that this
22 question implies that Torrent doesn't properly train their
23 auditors, and that's not true. And that's not what the
24 document that this whole line of questioning started with shows
25 what Torrent didn't -- what the FDA found that Torrent didn't

1 properly do is it didn't properly train its auditors on
2 Torrent's standard operating procedure with respect to how to
3 conduct an audit according to Torrent's individual policies.

4 Now, those policies arise from the same regulatory
5 guidance as the regulatory guidance that the independent
6 third-party auditor was specialized in. She has a Ph.D. in
7 organic chemistry, she teaches courses on how to properly
8 conduct audits under these regulatory guidelines. She, at this
9 time, conducted dozens, if not more, audits of Chinese API
10 suppliers. She was thoroughly familiar with the regulations,
11 had been trained specifically on those regulations. And what
12 the FDA is commenting on in 2017 is a very technical issue as
13 to whether or not Torrent's training of this auditor on
14 qualification includes reference to Torrent's own standard
15 operating procedures, not whether the audit is -- or was
16 generally properly trained to conduct an audit.

17 And so the implication of these questions lacks
18 foundation and is unduly prejudicial because it implies that
19 the auditors weren't properly trained in a general sense rather
20 than properly trained with respect to the specific procedures
21 that the FDA is commenting on.

22 MR. NIGH: That's a lot, but I will just say that
23 whatever adverse feeling they think the jury may get from this
24 question, they can certainly establish their own testimony on
25 those issues, but the question is clear in terms of verifying

1 its procedure on how can Torrent ensure that the inspection was
2 accurate. That's the beginning of it.

3 The purpose is precisely what the FDA said that this
4 auditor was not trained on, and that is verifying Torrent's
5 procedures and policies.

6 MR. RAE: And, again, Your Honor, I just want to
7 emphasize that the witness's answer speaks to assumptions that
8 she's making, which kind of goes back to why our position has
9 been that this question and answer and the prior one that we
10 were discussing before should not be coming in front of the
11 jury. We shouldn't be having a regulatory affairs witness
12 speculate and assume to the jury what was going on with
13 Torrent's training of its auditors. We should have people who
14 work in a department that's responsible for training and
15 supervising auditors testify to those issues.

16 MR. NIGH: Your Honor, for -- I can't disagree more
17 and I think the evidence shows that numerous times -- there are
18 times where even Dawn Chitty's on the phone with the FDA
19 herself. But numerous times it's the FDA and Dawn Chitty or
20 the FDA and Dawn Chitty and someone else. You know, Dawn
21 Chitty is the highest person in the U.S. that's speaking to the
22 FDA.

23 So when the FDA is asking these questions, the FDA is
24 making findings, and one of them is that the inspector is not
25 adequately trained. You know, that is -- her mouthpiece and

1 responses and the experience that she knows are highly relevant
2 in that situation because she is the mouthpiece between Torrent
3 and the FDA, and many times she is even the only person on
4 those phone calls, if not her and one other person.

5 SPECIAL MASTER VANASKIE: All right. This has been
6 argued at great length and both sides have presented persuasive
7 points, but I think the jury should hear this testimony.

8 So I will overrule the objections and allow the
9 questions and answers from page 93, line 9 through page 95,
10 line 2.

11 MR. RAE: And, Your Honor, just to make sure that the
12 record is clear, we had not objected to the testimony from
13 page 94, line 1 to page 95, line 2. I don't think that -- that
14 doesn't change anything about your ruling, I just wanted to
15 make sure that's clear for the record.

16 SPECIAL MASTER VANASKIE: Thank you for that. Yes.
17 Because it's easy for me to miss that.

18 But I did have on the spreadsheet objections from 93,
19 lines 14 to 95, line 2. But it doesn't matter. The issue has
20 been ruled on and we're ready to proceed now.

21 There's a counter-designation at page 97, line 5 to
22 page 97, line 9.

23 MR. NIGH: No objection, Your Honor.

24 SPECIAL MASTER VANASKIE: No objection. It's noted
25 then no objection.

1 All right. The next objection I have then, I think,
2 is page 107, lines 2 to 10.

3 MR. RAE: Yes, Your Honor. And the objection is only
4 107, line 7 to 10, and it's a pure relevance objection.

5 The question is: Torrent sells drugs in other
6 countries besides the U.S. and India, correct?

7 And the answer is: Correct.

8 And we think Torrent's sale of products outside of the
9 United States isn't relevant to this case.

10 SPECIAL MASTER VANASKIE: Daniel?

11 MR. NIGH: Well, Your Honor, it is -- there's one
12 issue as to which it's highly relevant, and that is they
13 receive API from ZHP in -- for old process and for new process.
14 But according to their testimony, these witnesses' testimony,
15 they only received API for old process. And there's this whole
16 thing that ensues from there, which is, they get the same
17 genotoxic statement from ZHP that says that their product is
18 free of genotoxic risk. And we saw a lot of that with Jaiswal.
19 But they get that same genotoxic statement.

20 And what they -- lo and behold, they find out, ZHP
21 confirms to them that their old process product that they're
22 selling in -- or new process product that they're selling in
23 other countries clearly is not free of genotoxic risk, but they
24 continue to rely on the continued assurances from the same API
25 supplier, that's just a piece of paper that looks identical to

1 the other piece of paper, that it's free of genotoxic risk for
2 their old process.

3 So this idea of whether or not they sell drugs in
4 other countries is highly relevant to that issue. It all goes
5 to their assurances that they've been given from their API
6 supplier that they used for both products even though they know
7 the assurance is patently false for one of their products and
8 doesn't continue to investigate the other assurance.

9 SPECIAL MASTER VANASKIE: You're drawing a lot from
10 that, Daniel. I don't know.

11 MR. NIGH: Oh, it's extremely relevant. It's the same
12 API supplier. So if their one -- and it's the same genotoxic
13 assurance that they've gotten. And then later they continue to
14 rely on the no genotoxic in their old process that they say is
15 only sold in the U.S., they continue to rely on that same
16 statement they got from the same supplier that they ultimately
17 know is patently false. And --

18 SPECIAL MASTER VANASKIE: I don't know how you're
19 drawing that connection from the question: Torrent sells drugs
20 in other countries aside from the U.S. and India, right?

21 MR. NIGH: Because they sell products in other
22 countries. I mean, that's one way in which the information is
23 relevant.

24 MR. RAE: Your Honor, I don't know that this is the
25 question and answer to be going down this tangent about kind of

1 plaintiffs' theories about kind of why sales of products in
2 other countries are relevant, but I would note that what
3 Mr. Nigh has just said is -- if plaintiffs are going to pursue
4 that line of theory, it is going to create an enormous amount
5 of trial management issues because we're going to have to have
6 minitrials on the ties between Torrent's sale of valsartan
7 products in other countries to its sale of valsartan products
8 in the United States. It's going to open up a huge can of
9 worms, it's going to create a huge trial management problem.

10 And I think throughout the preparation for this trial,
11 it's been consistent that this is a trial about Torrent's sale
12 of products in the U.S. and specifically kind of -- valsartan
13 products in the U.S. and valsartan products that were
14 manufactured using ZHP's old process for manufacturing
15 valsartan API.

16 MR. NIGH: Your Honor, it's not a can of worms. Same
17 API supplier, same assurances given for both products. They
18 know that one of their assurances from the same API supplier is
19 patently false, but they continue to rely on the second
20 assurance, it's the same assurance, without questioning it at
21 all, and they continue to forward that information to everybody
22 who asks, that it's free of genotoxic risk, because of this
23 assurance. They don't tell them, oh, the same API supplier was
24 patently wrong on other product that we already sell.

25 And to be clear, this has already -- this is --

1 there's an extensive cross-examination on this issue already.
2 So it's not the first time it's being raised.

3 SPECIAL MASTER VANASKIE: All right. I'll overrule
4 the objection. I don't understand how you -- the significance
5 you assign to the acknowledgment that they sell drugs in other
6 countries besides the U.S. and India, but I think you've
7 persuaded me that I better err on the side of caution in
8 letting it in. I don't see how Torrent is prejudiced by having
9 this fact acknowledged. So the objection is overruled.

10 MR. RAE: Understood, Your Honor. And we -- to be
11 clear, we didn't make a prejudice argument here because I would
12 agree that this testimony is not prejudicial and I also am
13 confused as to the lines that plaintiffs' counsel are trying to
14 draw from it. But your ruling is understood and I think we can
15 move on.

16 SPECIAL MASTER VANASKIE: All right. Are we now on
17 page 112, line 8?

18 MR. RAE: Yes, we are.

19 And, Your Honor, this ties back to Judge Bumb's motion
20 in limine ruling with respect to the necessity for there to be
21 ties between the observations that the FDA is making in these
22 inspection reports to valsartan and for us to be getting into
23 the details of the observations that the FDA is making. And
24 this testimony does not tie to the warehouses or facilities at
25 which valsartan's API was being manufactured. It does tie to

1 the broader -- I misspoke. It does tie to the broader Indrad
2 facility, but it does not apply to the specific buildings or
3 production lines that relate to the manufacturing of valsartan.
4 And, therefore, we think that it is irrelevant and unduly
5 prejudicial to be letting in testimony about the content of
6 this investigation report when it doesn't connect -- there's no
7 connection of the dots back to valsartan.

8 I think you can see plainly on the face of this
9 testimony there is no connection of the dots back to valsartan
10 here.

11 SPECIAL MASTER VANASKIE: Daniel?

12 MR. NIGH: There is a connection of dots but we don't
13 have to connect it necessarily on the face of this testimony.
14 But I will say I think that this is another question that we
15 should reserve and in my -- just like the other issue that we
16 had with Attinger because we may decide to just withdraw it
17 from this place, if defendant's assurances are that there was
18 no valsartan manufactured at this facility.

19 We should revisit on Monday.

20 SPECIAL MASTER VANASKIE: Let's revisit this on
21 Monday.

22 So are we at page 133, line 13?

23 MR. NIGH: I think we have some counters before that
24 at 118.

25 SPECIAL MASTER VANASKIE: I don't see a counter to

1 your -- I don't see an objection to your counter at page 118.

2 MR. NIGH: Oh, I see. There is no objections to those
3 two counters.

4 MR. RAE: And, Your Honor, I would suggest that I
5 think it ties to -- obviously, the testimony on line 133 is the
6 introduction of the document and so it probably makes sense to
7 talk about this through the testimony about that document or
8 objections to that testimony --

9 SPECIAL MASTER VANASKIE: Yes.

10 MR. NIGH: Can I take a step back before we get there,
11 though, because my spreadsheet might be wrong, but there are no
12 objections on 127 and 129?

13 MR. RAE: Correct. We withdrew those objections.

14 MR. NIGH: All right. No problem. Sorry about that.
15 130.

16 SPECIAL MASTER VANASKIE: No objections on 130. We're
17 up to 133 and 134.

18 MR. NIGH: Got it.

19 SPECIAL MASTER VANASKIE: And this is dealing with an
20 email string.

21 MR. RAE: Yes. And, Your Honor, I think this is one
22 of those situations where it probably makes sense to take a
23 step back because our objection is more conceptual than it is
24 to the specific questions that are being presented --

25 SPECIAL MASTER VANASKIE: Okay.

1 MR. RAE: -- which is, this is the issue that we were
2 just talking about a moment ago about plaintiffs' theory that
3 Torrent's production of valsartan for European and other
4 international markets that use new process API is something
5 that should be coming before the jury in this case, and the
6 pretrial order that we have been on the verge of finalizing,
7 had agreed to back in March, is very clear that both parties
8 agree that for purposes of this trial, Torrent did not use
9 ZHP's new process API for its production in the United States.
10 It only used old process API.

11 And this email and the questions about it reflect
12 questions that Sue Perry, who is also a regulatory affairs
13 employee at Torrent, was asking about amendments that ZHP made
14 with respect to its DMF for new process API. And we think it's
15 irrelevant to the case against Torrent to be asking questions
16 about Torrent's reactions to that amendment that relate to
17 Torrent's, again, use of that API not in the United States but
18 in other places around the world and that it's unfairly
19 prejudicial because it's going to lead to confusion of the
20 jury. The jury is going to hear that this case is only
21 about -- that for Torrent purposes, Torrent only used old
22 process API. That's what the jury is going to hear this case
23 is about, but then they're going to hear this confusing
24 testimony about Torrent emails discussing the DMF amendment
25 with respect to new process API.

1 And we think it's necessary to avoid confusion and
2 prejudice to Torrent, of the jury potentially confusing what
3 Torrent knew or could have known about the old process API
4 that's at issue in this case with things about new process API,
5 the jury not be hearing lines of questioning and seeing
6 documents about what Torrent was reviewing with respect to the
7 new process DMF amendment by ZHP that don't relate to the
8 products at issue in this case for Torrent.

9 SPECIAL MASTER VANASKIE: All right. Daniel?

10 MR. NIGH: Where is this objection, and what are the
11 pages, lines and where does it end? Do you know, Jacob?

12 SPECIAL MASTER VANASKIE: I think it ends at page 137,
13 line 8.

14 MR. RAE: I believe that's right.

15 SPECIAL MASTER VANASKIE: And starts at page 134,
16 line 6.

17 MR. RAE: It may also extend then on page 138 to some
18 degree.

19 MR. NIGH: That's what I'm asking. So I'm just trying
20 to see where this overall ends.

21 Do you think it ends at 139-9?

22 MR. RAE: I think that's fair. I think the question
23 on 140 is sufficiently general that it kind of -- our objection
24 is to the document wouldn't necessarily affect that question.
25 And I think it's kind of -- we have objections there to it

1 being cumulative of some of the questions on 139, but we agree
2 that it is fair to establish that the United States foreign
3 entity did not do testing itself of products, but that it would
4 have to go to the Indian facility where quality was handled for
5 testing. So --

6 MR. NIGH: Okay.

7 MR. RAE: I think the questions from 193-3 to 9 are
8 certainly -- and particularly if we script out that in this
9 email those are the topics, yes, like, prefaced, we still would
10 continue to have no objection to that question.

11 MR. NIGH: Right. And, Your Honor, the reason I'm
12 asking is because I do think we will withdraw this. I just
13 need to find the spot that we're withdrawing to make it clear
14 for the record. I'm persuaded by their argument.

15 130 is not what was intended when we were -- to go
16 into how the API is made and things of that nature, so I think
17 we will, recognizing this, withdraw this. I'm just trying to
18 figure out where the withdraw is.

19 It would be 133 -- I think there are questions about
20 the exhibit, so -- that are asked later just on the testing; am
21 it right?

22 MR. RAE: Yes. So if I could -- I think one solution
23 here might be if you changed your -- if you designated 139-3 to
24 9, that questioning on its own -- you don't have -- we haven't
25 previously objected to the prior question or answer to -- I

1 don't know that you need it for what's established in 3 to 9
2 and may be confusing if you're withdrawing the rest of the
3 testimony, but --

4 MR. NIGH: Okay.

5 MR. RAE: But I think 139-3 to 9 kind of would
6 probably stand up on its own and stand for the proposition that
7 you might want to establish there. I don't want to speak for
8 you, but that might be the right way to draw the line here.

9 MR. NIGH: I agree with you.

10 So, Your Honor, we will withdraw 133-13 to 133-20,
11 134-2 to 137-8, and then 138-10 to 139-2, but we would still
12 continue to keep 139, lines 3 through 9.

13 SPECIAL MASTER VANASKIE: All right. Any objection to
14 that?

15 MR. RAE: No, Your Honor.

16 SPECIAL MASTER VANASKIE: All right. Good. So the
17 next one I have is 143, line 11 to 144, line 17.

18 MS. LOCKARD: Actually, just to back up, Your Honor, I
19 think we have an objection at 140-2 to 7. It's a
20 cumulativeness objection. I'm not going to expend a lot of
21 energy arguing that objection, and we'll defer to your ruling
22 or Mr. Nigh's view of whether or not they actually need to have
23 a kind of second set of testimony that establishes where
24 testing capacity existed.

25 SPECIAL MASTER VANASKIE: So this is the exchange on

1 page 140, lines 2 to 7, I take it?

2 MR. RAE: Right. And our objection is basically we
3 think that that question establishes the exact same thing as
4 130-3 to 9, and so it's cumulative. But again --

5 SPECIAL MASTER VANASKIE: I'll overrule the objection.
6 I'll overrule the objection. That's it.

7 So are we up to 143 now?

8 MR. RAE: Yes. And our objection here -- I think I'm
9 willing to withdraw our objections.

10 SPECIAL MASTER VANASKIE: Okay.

11 MR. RAE: 143. I don't remember if we had before...

12 MR. NIGH: Honestly, we will withdraw 143-11 to 143-18
13 because they're coming in back to back now. We don't need to
14 re-establish that they can't test in the U.S. from the prior
15 testimony that's already given.

16 SPECIAL MASTER VANASKIE: All right. So 143, line 11
17 to 143, line 18 is out?

18 MR. NIGH: Yes. Otherwise, the jury's hearing the
19 same question back to back.

20 SPECIAL MASTER VANASKIE: And is the balance of the
21 testimony on 143, line 19 to page 144, line 17, is that in now,
22 or are you objecting to --

23 MR. RAE: Yes.

24 SPECIAL MASTER VANASKIE: That's in. All right.

25 MR. RAE: Yeah. We had had -- there had been a prior

1 version of the designations that had cut some, like, small
2 portions of that. And we had a 106 objection there, and I
3 think we've resolved that by filling in the gaps.

4 MR. NIGH: Yes, I think so.

5 SPECIAL MASTER VANASKIE: Okay. So are we up to
6 page 147?

7 MR. NIGH: And we have a completion designation, 146
8 to -- or counter-designation, 146-12 to 146-17.

9 MR. RAE: And I believe we withdrew that
10 counter-designation.

11 MR. NIGH: Okay.

12 SPECIAL MASTER VANASKIE: Yes. It's not on my
13 spreadsheet.

14 MR. NIGH: Sorry.

15 SPECIAL MASTER VANASKIE: So I have us at page 147, it
16 says line 16.

17 MR. RAE: Yes. And, Your Honor, this is another one
18 of those areas where there's kind of a large block of testimony
19 designated in a row, and our objection isn't to the whole
20 thing. So our objection begins at page 148, line 6.

21 SPECIAL MASTER VANASKIE: I see that now. Okay.

22 MR. RAE: And this is a similar objection to some of
23 the other ones that we've been discussing before, where, again,
24 we're not disputing relevance or other issues here. This is a
25 foundation objection based on the fact that this witness

1 testifies at 148-2 to 5: So prior to today, have you ever seen
2 this email?

3 She doesn't recall ever having seen this email before.
4 She's not on this email. She's -- and the line of questioning
5 that follows lacks foundation.

6 MR. NIGH: And, Your Honor, we find this to be very
7 different. Just to put this in context, the same day of this
8 email, Dawn Chitty is saying we need to test our product, we
9 need to test our product, we need to test our product, we need
10 to ensure that our old process doesn't have NDMA in it. And
11 right after she's saying that, they drop her off of the email
12 chain and they have all this communication that takes place
13 without her knowledge.

14 And she's the mouthpiece to the FDA. So her being
15 dropped off all this information and then her saying, oh, that
16 information was actually never conveyed to me is highly
17 relevant because how could she convey it to the FDA?

18 MR. RAE: And again, Your Honor, this kind of gets
19 back to the foundation issue that we've talked about before.
20 We're not contesting their ability to establish that Dawn
21 Chitty has testified that she's not familiar with this
22 document. Our position is just that's the end of the story
23 with respect to the testimony that they should be able to
24 elicit about the document from Dawn Chitty about the document.

25 That doesn't stop them from making arguments about the

1 implications of Dawn Chitty not having seen this document, it's
2 simply improper to do it by asking her subsequent questions
3 about what the content of that document that she's not familiar
4 with are.

5 MR. NIGH: And again, Your Honor, we can go further
6 than that because the information that's specific in the
7 document, it might not be conveyed to her just by seeing the
8 email later on, somebody shows her that specific email. It
9 might be that afterwards Sanjay Gupta picks up the phone and
10 calls her, hey, I just want to let you know, we had all these
11 conversations.

12 There are many different ways that information is
13 conveyed in the business world other than seeing this specific
14 document. So we can read the information that's given in this
15 document and then see if she's aware of that information.

16 MR. RAE: Your Honor, that --

17 SPECIAL MASTER VANASKIE: Go ahead, Jacob.

18 MR. RAE: To the extent that that's true, that's not
19 what they're doing here. The questions are -- just running
20 through the questions at line 148-6 to 11. There's a question
21 where counsel reads the contents of the document and asks --
22 he's referencing valsartan, right? It's just a quote from the
23 document and asking the witness about what the document says.

24 The next question on 14 to 17 of page 148, again, they
25 quote from a document.

1 He says: The quote is read, right?

2 And the answer is: That is what he has written.

3 Next question: So in this email, like I said, you're
4 not even on it. He's asking India why could we not find this
5 out, right?

6 And that's -- again, it's just asking the witness what
7 the document says.

8 The next question asks about testing -- about kind of
9 India's responsibility to test the product. That question is
10 potentially different, and I would be willing to kind of agree
11 that that question stands on its own outside of the email and
12 is not one for which there is a lack of foundation.

13 And then kind of picking up at 149-3 to 11, again,
14 it's another quote from a document and then asking Ms. Chitty
15 to confirm that that's what the document says.

16 These are not questions asking Dawn Chitty about what
17 she knew about this issue independent from this document. That
18 line of questioning may be proper; it's not the line of
19 questioning plaintiffs pursued here. And so there's a
20 foundation line of questioning -- foundation issue with the
21 line of questioning that they pursued.

22 And the fact that Mr. Nigh can stand here and tell you
23 about other ways that they could have approached this
24 questioning that may have complied with the rules of evidence
25 does not make this line of questioning that they're designating

1 compliant with the Federal Rules of Evidence.

2 SPECIAL MASTER VANASKIE: Well, the fact that she is
3 not included in this email seems to me to have independent
4 significance.

5 MR. RAE: And, Your Honor, we're not protesting that,
6 and we're not protesting -- we're not objecting to plaintiffs'
7 establishment of that fact.

8 SPECIAL MASTER VANASKIE: But I am inclined to agree
9 with Jacob that it's not appropriate examination of this
10 witness to ask what the email says. That's basically what
11 you're doing.

12 MR. NIGH: I understand, Your Honor.

13 SPECIAL MASTER VANASKIE: So I'll sustain the
14 objection. And I just want to be clear what's excluded. And
15 in my mind it's from page 147, line 15 through page 149,
16 line 13. There's a counter at page 149, line 20 to page 150,
17 line 10.

18 And I know you view some of the information as not
19 responsive, but I think it all comes in, so I will allow that.

20 MR. NIGH: I guess at this point, though, we just
21 sustain the information that it would be counter to.

22 SPECIAL MASTER VANASKIE: That's true.

23 MR. RAE: And, Your Honor, just to be clear, I think
24 this counter is also relevant to the testimony on 151, lines 9
25 to 24, where plaintiffs are asking Ms. Chitty about Torrent's

1 use of independent labs, and this counter is discussing
2 Torrent's ability to hire an independent lab to do testing.
3 And so it really ties more to that next set of testimony.

4 I would agree that if you sustained our objection at
5 151-9 to 24, then our counter would definitely fall out.

6 MR. NIGH: I do agree that it could be a
7 counter-designation to 151-9 to 151-24. I guess we should
8 probably deal with that objection first.

9 SPECIAL MASTER VANASKIE: Yes, let's deal with the
10 objection on page 151.

11 What's the basis for that objection, Jacob?

12 MR. RAE: I think this is a relevance issue and also a
13 confusing the jury issue. This is -- the issue of whether or
14 not Torrent has used independent labs in the past for testing
15 assignments is, at least as framed here, where it's kind of an
16 abstracted issue of just that basic kind of fact that Torrent
17 has at times used independent labs for testing, lacks
18 connectivity back to the facts of this case, which are really
19 about what Torrent was doing with respect to valsartan itself.

20 I do think if Mr. Nigh is -- I think a lot of kind of
21 that confusion and prejudice would be cleared up by our
22 counter-designation the page before. And so I think kind of
23 these kind of coming together, fall out together and --

24 SPECIAL MASTER VANASKIE: Right.

25 MR. NIGH: But I was going to suggest one more thing,

1 that if the counter comes in, then pages 150, lines 11 to 22
2 should come in as well, the counter to the counter. Because
3 it's the only way to make that counter complete.

4 SPECIAL MASTER VANASKIE: All right. I agree. So
5 coming in -- let me see where this starts. Page 149, line 20
6 through 150, line 22 comes in; 151, line 9 through 24 comes in.
7 All right?

8 MR. NIGH: And we would obviously remove the
9 objections.

10 SPECIAL MASTER VANASKIE: Yes, obviously.

11 MR. NIGH: Okay.

12 SPECIAL MASTER VANASKIE: Are we now up to page 160?

13 MR. RAE: Yes, we are, Your Honor.

14 And, Your Honor, this is a similar issue. Our
15 counter-designation sort of highlights the source of our
16 objection, which is counsel, in the question itself,
17 acknowledges on page 160, lines 9 to 11, "You're not on this
18 email, so I'll walk you through a little bit slower," and then
19 proceeds to, as we just discussed and as Your Honor sustained
20 our objection, ask the witness questions about the content of
21 this email and asked the witness to confirm that's what the
22 email says. So we --

23 MR. NIGH: We don't have an objection to the counter
24 if the information comes in. So we'll withdraw that.

25 MR. RAE: And again, Your Honor, I think our objection

1 here -- I was highlighting the counter to highlight the
2 foundation objection that we're making, which is that this is
3 an email that the witness isn't on, that counsel is even
4 acknowledging in their question, doesn't know what this email
5 is about because they weren't on it, and then proceeds to
6 ask -- read the email into the record and ask the witness to
7 confirm that that's what the email says.

8 SPECIAL MASTER VANASKIE: Yes, I'll sustain the
9 objection. So to be clear, 160, lines 8 through 20 are out.

10 Let's go to page 161.

11 MR. RAE: Your Honor, I don't want to bog us down
12 here, but if I can --

13 SPECIAL MASTER VANASKIE: Did I miss something?

14 MR. RAE: No. I was just going to ask Mr. Nigh if
15 they're going to keep in 160, 2 to 7, and he can decide that
16 later. But we obviously haven't objected to that, so we don't
17 need to waste time on it here either.

18 SPECIAL MASTER VANASKIE: All right.

19 MR. NIGH: We wouldn't keep that in based on Your
20 Honor's ruling. We would strike that as well.

21 SPECIAL MASTER VANASKIE: All right. So 160, lines 2
22 to 7 is out.

23 MR. NIGH: Yes. I was just trying to verify -- that's
24 what I was looking at just now, is to see whether or not there
25 was any more information asked of this document. Because it's

1 just introducing the document.

2 SPECIAL MASTER VANASKIE: Yes.

3 MR. NIGH: So if there is, then we would obviously
4 need it, but I don't see that there is.

5 MR. RAE: Your Honor, our objections on page 161 to
6 163 are all related to the same issue. I think we do have some
7 cumulativeness objections under Rule 403 here as well, but if
8 the same ruling on the foundation objection that you just made
9 with respect to the other question about this document stands
10 up, then we don't need to get into our other reasons for
11 objecting to this.

12 MR. NIGH: I agree. It would be a similar issue.

13 SPECIAL MASTER VANASKIE: So we could exclude --
14 that's what I'm trying to see.

15 Well, let me ask you, Jacob, what's your understanding
16 of what gets excluded?

17 MR. RAE: My understanding is it would be page 160,
18 line 11 to 160, line 20; page 161, line 15 to page 161,
19 line 17; page 162, line 1 to page 162, line 6; page 162,
20 line 10 to page 162, line 22; and page 163, line 2 to page 163,
21 line 10.

22 SPECIAL MASTER VANASKIE: That's what I show as well,
23 and that's what we will do. They're excluded.

24 MR. RAE: Thank you, Your Honor.

25 MR. NIGH: Your Honor, if I may, going back to this, I

1 do want to provide at least one for all of this -- I think all
2 of it is on the same topic, and that is, even though she's not
3 on this email, these are just providing test results to the
4 products that ultimately she's responsible for the response to
5 the recall in the U.S. So this is the type of information she
6 would typically rely upon.

7 SPECIAL MASTER VANASKIE: I've made my ruling, and
8 we'll stick with that.

9 MR. NIGH: Okay.

10 MR. RAE: And I think as Your Honor has seen, there's
11 other documents in the record that they ask about that relate
12 to these similar test results that have come in already.

13 I don't think there's any prejudice to plaintiffs'
14 ability to present their case from this either.

15 MR. NIGH: I'm just not sure that they're the same, so
16 that's the only reason I raise that. I'm not sure they're the
17 same batches.

18 MR. RAE: And also to be clear, I think there's no
19 contest in this case or a dispute about the actual test results
20 that exist here.

21 MR. NIGH: Okay.

22 SPECIAL MASTER VANASKIE: So are we up to page 170
23 now --

24 MR. RAE: Yes.

25 SPECIAL MASTER VANASKIE: -- line 16 to page 171,

1 line 16?

2 MR. RAE: Correct. And just to clarify, we're not
3 objecting to the answer at 170, 16 to 18. Our objection begins
4 at page 170, line 20, which is there's a transition in the
5 questioning to a new document and a new line of questioning
6 that begins there.

7 SPECIAL MASTER VANASKIE: Yes.

8 MR. RAE: And I think this is an issue that we
9 addressed before with respect to questions of Ms. Chitty about
10 the DMF amendment with respect to the new process API change.

11 I think we've -- I explained our reasoning for
12 objecting to that before, and I can -- I don't need to repeat
13 that unless it would be helpful for Your Honor.

14 SPECIAL MASTER VANASKIE: No, no need to repeat it.
15 Thank you, though.

16 MR. NIGH: Your Honor, we'll withdraw this testimony
17 too.

18 SPECIAL MASTER VANASKIE: All right. Very well.
19 Withdrawn.

20 MR. NIGH: 170-16 to 171 -- sorry. I don't even know
21 if we need 170-16.

22 Give me one second here.

23 Oh, no, I am sorry. It goes from 170, line 20 to 171,
24 line 16, we withdraw that.

25 SPECIAL MASTER VANASKIE: Very well.

1 And why don't we take a break now for lunch. Resume
2 at 1:15.

3 Is that all right?

4 MR. NIGH: Yes.

5 MR. RAE: Yes. Yes, Your Honor.

6 SPECIAL MASTER VANASKIE: I'll see you at 1:15.

7 Thank you.

8 (Luncheon recess taken from 12:09 p.m. to 1:17 p.m.)

9 SPECIAL MASTER VANASKIE: So let's resume. And where
10 are we picking up?

11 MR. RAE: I believe we are at our counter at 189, 20
12 to 21.

13 SPECIAL MASTER VANASKIE: Right. Okay.

14 MR. NIGH: Sorry, one second, Your Honor. I'm in a
15 different spot in the transcript.

16 SPECIAL MASTER VANASKIE: Take your time.

17 MR. NIGH: Your Honor, we don't have any objection to
18 that coming in.

19 SPECIAL MASTER VANASKIE: And the question is at
20 line 20 of page 189: Do you remember this email?

21 And the answer is: Not specifically, no.

22 All right. That comes in.

23 Does that take us now to page 193, line 3?

24 MR. RAE: Yes, Your Honor, it does. This is our
25 objection. It's a form and 403 objection, and I think the

1 primary issue -- and it's the 403 objection as well -- is the
2 vagueness of the question, and -- "You would want to know if
3 there's a quality issue with a drug before it actually becomes
4 a problem in the market" is the question that's being asked,
5 and I think that's a very abstract and vague question that
6 doesn't define the type or the nature of the potential quality
7 issue.

8 SPECIAL MASTER VANASKIE: I think the question is
9 understandable on its face, and overrule the objection.

10 MR. RAE: Understood, Your Honor.

11 SPECIAL MASTER VANASKIE: Next one is 193, line 12.
12 That's the objection to the answer.

13 So to be clear, 193-6 through 193-13 comes in.
14 There's an objection to 193-15.

15 Are you just objecting to the introductory statement:
16 Okay. With that in mind, let's take a look at this email?

17 Or are you objecting to the entire question?

18 MR. RAE: We're objecting to the entire question. The
19 question, I think, continues on to the next page, and really
20 the core of what we're objecting to is this question is asking
21 about a European recall of valsartan products.

22 Judge Bumb has already granted a motion in limine with
23 respect to international processes, recalls, international
24 notices, all of those things. This is a similar issue to the
25 ones that we've been discussing earlier today of this case is

1 about United States valsartan and what happened with the
2 valsartan that was being marketed by the defendants here and
3 sold in the United States and the recalls that took place in
4 the United States, not about what happened in Europe.

5 MR. NIGH: And, Your Honor, I don't think it comes a
6 surprise that I completely disagree with that. This case is
7 not just about what happens with Torrent U.S. product because
8 there's a global issue that's happening here. And this
9 highlights another one of the issues why this is so important.
10 You've got -- and again, some of the statements that were made
11 about Dawn Chitty only being a regulatory person, that's just
12 not true.

13 Why would a Torrent salesperson be forwarding an
14 article that talks about the recall that's happening in Europe
15 with ZHP API? Because it's not her only role. And she
16 described it earlier. She also sees herself as safety and
17 compliance, and we're going to see all sorts of information
18 that is sent to her. She's replying. She's responding. She
19 is giving information.

20 She is later telling Torrent India that they need to
21 be developing a test to test this product because her only role
22 is not just regulatory. She's very much safety and compliance.
23 She's very different than the person who takes over for her,
24 Bernadette Attinger.

25 And so to start off on this one, specifically to this

1 issue, what raises this issue is because this Torrent
2 salesperson knows they're using the same API supplier. It's
3 ZHP API that's being recalled in Europe, and they see this
4 article and they see, oh, there's a carcinogen in the product,
5 you know, have you seen this. And there's all sorts of
6 questions that are going to talk about this issue, and this
7 goes to sort of the alarm that should be raised for
8 Dawn Chitty.

9 Some of the information she's not aware of. She says
10 she doesn't know some of it, but she should. It's the same API
11 supplier, ZHP, that they're discussing in this article -- and
12 she recognizes that -- that's also supplying their API for
13 their Torrent valsartan API.

14 And I should say, it's the API supplier that's
15 supplying valsartan API in China, that's also -- for Europe,
16 that's also supplying this valsartan API in the U.S.

17 MR. RAE: Your Honor, if I may briefly, because I
18 think what Mr. Nigh said highlights why this is going to be
19 confusing to the jury and why Judge Bumb has already ruled
20 these sorts of things come out, but there's some particular
21 aspects of that for Torrent that I would like to address
22 briefly.

23 SPECIAL MASTER VANASKIE: Go ahead.

24 MR. RAE: So this is an email that -- I think the
25 exact date is higher up in this chain, but I believe it was

1 sent on July 6th. And a critical piece of context here is the
2 recall that's happening in Europe that this email is about,
3 that Mr. Nigh is saying that -- like, that's relevant to this
4 issue for here, is about the NDMA that exists in ZHP's new
5 process API. It's the same issue that was being notified to
6 customers on June 20th and June 26th, and like in -- early in
7 June that Torrent knows about already with respect to the new
8 process API. There's no notice issue here with respect to
9 Torrent. There's no new information here.

10 It's just a confusing interjection of something that's
11 happening in Europe regarding the recall in Europe of new
12 process valsartan API that doesn't even tie back to the old
13 process API that Torrent is using and is an issue in this case
14 with respect to Torrent's sales of valsartan in the United
15 States.

16 MR. NIGH: And, Your Honor, this goes back to why I
17 introduced that connection earlier. Same API supplier that
18 Torrent uses for its product in the U.S. and its product in
19 Europe, and they get a free-of-genotoxic statement for their
20 products in Europe and they find out ZHP was patently false and
21 they recognized that, they were wrong. But they continue to
22 rely on the free-of-genotoxic risk guarantee from ZHP on their
23 old process. I believe that the jury should be able to examine
24 that.

25 SPECIAL MASTER VANASKIE: The objection is overruled.

1 MR. RAE: Your Honor --

2 SPECIAL MASTER VANASKIE: The objection is overruled.
3 Let's move on to the next one.

4 MR. RAE: Thank you, Your Honor.

5 SPECIAL MASTER VANASKIE: Are we on page 195 now?

6 MR. RAE: I believe so.

7 MR. NIGH: I believe that that covers -- the
8 objections are all similar between 193 to 191, line 1 -- or
9 198, line 1.

10 MR. RAE: I would disagree. I think the -- these all
11 relate to the same document, but I think the question at 195-2
12 through the answer on page 195, line 11 has a different nature
13 of the objection.

14 SPECIAL MASTER VANASKIE: You can argue it, Jacob.

15 MR. RAE: So I think there are -- obviously, the
16 objections that we previously made that Your Honor has
17 overruled we believe would apply here, but this question of
18 claiming that valsartan is being associated with the word
19 "cancer" and that that's information that we would want to
20 have, we think that that's a highly prejudicial question to be
21 presenting to the jury here, particularly when everyone
22 acknowledges that this case is not about whether or not
23 valsartan causes cancer, it's, at most, about -- most issues of
24 cancer come into play here with respect to risk issues that
25 impact the value of the product.

1 SPECIAL MASTER VANASKIE: Daniel?

2 MR. NIGH: Your Honor, I would agree that depending on
3 how the judge rules, this question, in and of itself, would be
4 depending on how the judge rules on that issue.

5 So I think we should reserve because -- you know,
6 while Jacob says everybody agrees, I'm not so sure that
7 everybody is agreeing.

8 SPECIAL MASTER VANASKIE: Well, if I had to rule
9 today, I would sustain the objection, but we'll reserve ruling
10 on it subject to Judge Bumb's determination.

11 MR. RAE: And then, Your Honor -- I'm just jumping
12 ahead but I would agree that our objections from line --
13 leaving out some of the objection pieces but starting on
14 page 196, line 22 and extending through page 198, line 1 are
15 covered by the prior rulings.

16 MR. NIGH: I agree. I think just to make that clear,
17 the prior rulings that allow the testimony in.

18 SPECIAL MASTER VANASKIE: Yes, so this all comes in.

19 MR. NIGH: Yes, Your Honor.

20 SPECIAL MASTER VANASKIE: So the record is clear.

21 Are we now up to page 201?

22 MR. NIGH: Yes.

23 MR. RAE: Yes, Your Honor.

24 SPECIAL MASTER VANASKIE: So the very bottom of the
25 page, so 201, line 24.

1 MR. RAE: And, Your Honor, I think this question is
2 improper because it asks our witness to offer her -- Ms. Chitty
3 to offer her own opinions as to what customers who would be
4 purchasing this product would want to ingest or not ingest.
5 That's really an ultimate issue in this case that's for the
6 jury and this question is invading the province of the jury.

7 We have a variety of objections here, but the 403 and
8 701 objections at their heart are this is an improper question
9 asking Ms. Chitty to comment on what customers of this product
10 would want. That's not even something that a traditional
11 Rule 702 expert would be allowed to opine upon. That's an
12 issue for the jury to decide based on the facts related to the
13 risks and benefits associated with this product.

14 SPECIAL MASTER VANASKIE: Daniel?

15 MR. NIGH: That's a creative argument, but there's
16 obviously a lot of ways that this question and answer could be
17 interpreted as probative and doesn't have this unfair
18 prejudice. Jake was taking a very narrow view.

19 She's the head of regulatory, she said this -- she's
20 in the U.S., she set this bar, you know, she's safety and
21 compliance. We're going to see further that people are asking
22 her how she should be -- how they should be communicating in
23 the U.S. with clients and customers. So --

24 SPECIAL MASTER VANASKIE: Yes, I think this question
25 is fine. I'll overrule the objection.

1 MR. NIGH: Okay.

2 MR. RAE: And I think next is our objection to the
3 question from 202-16 to page 202, line 22.

4 MR. NIGH: Your Honor --

5 SPECIAL MASTER VANASKIE: Yes.

6 MR. NIGH: Sorry, I didn't mean to -- just before
7 Jacob goes, I think it's important to say I would agree that
8 this gets withdrawn if there is no evidence submitted by the
9 plaintiff that -- before this video is submitted -- that NDMA's
10 only use is to induce tumors in rats, in animals. But we
11 suspect that by the time this video is played, that evidence
12 will have been introduced by the plaintiffs.

13 MR. RAE: And, Your Honor, I think that --

14 SPECIAL MASTER VANASKIE: You may want to introduce
15 that evidence, but I still think the question is objectionable.

16 MR. NIGH: I should say the reason it would become
17 relevant now, once that is introduced, is the very fact that
18 she's not aware of it and she's the one who is being asked to
19 communicate with clients, she's the one -- customers, she's the
20 one who's being sent the notice from the salesperson. All
21 sorts of information she doesn't even know what the use of NDMA
22 is.

23 MR. RAE: And, Your Honor --

24 SPECIAL MASTER VANASKIE: Can you clarify?

25 MR. RAE: Yes. This is a question that's being framed

1 in terms of what Ms. Chitty knew on June 20th of 2018. That's
2 the date where Torrent received a notification from ZHP
3 indicating that there was a previously unknown impurity that
4 had been identified with genotoxic potential in ZHP's valsartan
5 API. That notification did not identify which type of API it
6 related to and it did not, importantly, identify what the
7 impurity was.

8 So I don't understand why there would be any relevance
9 to Ms. Chitty's knowledge on June 20th, 2018, of what NDMA
10 could be used for when Ms. Chitty had no reason to know
11 anything about NDMA as of June 20th, 2018, including from the
12 notice that had been given by ZHP that did not name NDMA.

13 But --

14 SPECIAL MASTER VANASKIE: Yes, I agree. I sustain the
15 objection.

16 MR. NIGH: Judge, if I may, this is actually -- this
17 goes to our whole point, though, Judge. Just because they
18 didn't actually -- Torrent didn't actually know what the
19 genotoxic impurity was at the time that ZHP sends them a notice
20 of what is the genotoxic impurity, that doesn't mean that
21 Torrent gets to cover its ears and be like no, no, no, we don't
22 know, we don't know. Of course there should be a step further.

23 What they should have done is just ask -- ask them
24 right at that moment what is the genotoxic impurity, so they
25 should have known as of June 20th when they gave this statement

1 to them. They can't just cover their ears, which is what they
2 did.

3 But our point is they should have known, as of the
4 date they got that statement from ZHP, because the reasonable
5 inquiry would be immediately to ask, well, what is the
6 genotoxic impurity?

7 SPECIAL MASTER VANASKIE: I still think the question
8 as posed is objectionable and I sustain the objection.

9 Are we now to page 209?

10 MR. RAE: I think plaintiffs had an objection to our
11 counter on page 205, lines 11 to 18.

12 SPECIAL MASTER VANASKIE: Correct.

13 MR. RAE: And if it's helpful, I can just jump in.

14 The counter here is really just there is questions
15 later on that name Mr. Patel. On page 207, line 14 to 19,
16 there's a question about Mr. Patel himself and what he is
17 writing and so we just think that this is helpful context to
18 the jury to understand who's writing this email. That's what
19 they're going to be asked about in questions that we have not
20 objected to.

21 MR. NIGH: We withdraw our objection, Your Honor.

22 SPECIAL MASTER VANASKIE: All right. Very well. So
23 withdrawn. That comes in.

24 Now I think we're at page 209.

25 MR. RAE: Correct. And, Your Honor, our objection

1 here is only to the last question and answer designated here on
2 page 210, line 5 to 7: So you're just following orders at this
3 point, question?

4 That's an argumentative question. We think it's
5 clearly unfairly prejudicial and, frankly, the facts that that
6 question is drawn -- the question is drawn upon the facts that
7 are being established in the prior testimony that we have no
8 objection to. There's facts here that the ultimate decision
9 here in the prior question is not being made by Torrent USA,
10 it's being made by the quality department in Torrent India.
11 That comes in, that's relevant, that's proper. "You're just
12 following orders" is not an appropriate question.

13 MR. NIGH: Your Honor, we think it's appropriate.
14 It's following the testimony, obviously, that "you're just
15 following orders," pertains to the question right above. And
16 it's colloquial terms because, keep in mind, not every juror
17 has the same amount of education. So to boil down the answer
18 right from above and say, well, you're just following orders?
19 Yes. And she admits that it's true.

20 SPECIAL MASTER VANASKIE: Yes, I'll overrule the
21 objection.

22 Now are we to page 214?

23 MR. NIGH: I believe so.

24 MR. RAE: I believe so as well.

25 And, Your Honor, our objection here is I think framed

1 by Ms. Chitty's answer to the first question that's asked here.
2 It's a question about -- the question is framed -- I'm going to
3 skip some of the preamble to it but it's: I mean, working in
4 regulatory, you know how important it is to communicate with
5 customers, right?

6 And Ms. Chitty explains that's not really a regulatory
7 concern for her, communicating with customers. I was
8 communicating with FDA primarily.

9 And the next question then asks her about things about
10 the importance of communicating issues with customers again,
11 and I think maybe that kind of -- I think there's some
12 prejudicial and unfair and misleading and kind of layered in
13 assumptions to the initial question that makes it improper, and
14 the follow-up question is certainly improper in that it's
15 following up on the witness saying, that's not a thing that I
16 know about, to ask her a subsequent question about the thing
17 that she just said that she doesn't know about.

18 SPECIAL MASTER VANASKIE: No, I think this question is
19 appropriate and she can answer from her perspective a question
20 concerning the importance of communicating quality issues to
21 customers.

22 So I'll overrule the objection.

23 MR. RAE: And for the sake of the record, Your Honor,
24 I think that applies to our objections between page 214,
25 line 15 through page 215, line 19.

1 Is that right?

2 SPECIAL MASTER VANASKIE: Correct.

3 And now I think we're to page 218, line 23.

4 MR. RAE: Correct, Your Honor. And our objection here
5 is only to the question and answer at page 219, line 6 to 219,
6 line 13.

7 SPECIAL MASTER VANASKIE: Okay.

8 MR. RAE: And the objection is the plaintiffs' counsel
9 reads a portion of this email that's being asked about where
10 there's a reference to validating our assumption that the ROD
11 does not have an issue, and then the question is: Assumption
12 means guess.

13 And that question lacks foundation, it's frankly
14 inconsistent with typical English language. Assumption does
15 not mean guess. Assumption has a very different meaning from
16 guess. And, again, they're just kind of -- an additional layer
17 to this, which is Ms. Chitty is being asked to opine on what
18 someone else meant when they wrote something. It probably
19 would be appropriate to ask Ms. Chitty what her understanding
20 of that message was. But to ask her what the other person who
21 is writing this email intended to communicate in their choice
22 of word "assumption" is asking her to speculate as to someone
23 else's state of mind and that's not proper.

24 SPECIAL MASTER VANASKIE: Daniel?

25 MR. NIGH: Your Honor, she's the recipient of the

1 email, so obviously the questions are based in her capacity as
2 the recipient of the email when it's asked assumption means
3 guess. And then she answers it. She actually corrects and
4 says, the email says to validate our assumption.

5 SPECIAL MASTER VANASKIE: I will overrule the
6 objection. She was clear in her answers to the questions and
7 made it clear on page 220 that assumption does not mean guess.
8 It says that they're assuming that the only root of synthesis
9 does not have an issue.

10 MR. NIGH: Right.

11 SPECIAL MASTER VANASKIE: I think we go to page 221,
12 line 19.

13 MR. RAE: Correct, Your Honor.

14 And our objection here is we -- we aren't objecting to
15 the first question and answer designated on page 221. Our
16 objection is to the question beginning at page 221, line 24
17 through to the answer on page 222, line 8.

18 And the objection is -- and there was a form objection
19 made on the record at this point that there's a lack of
20 foundation for this question and there's also a vagueness to
21 the question that's a problem in that the question is about
22 Torrent verifying that there's no NDMA in their drug valsartan,
23 and this is a particularly problematic question in light of the
24 time period that this testimony is situated in, which is, this
25 is on July 11. This is after ZHP has notified Torrent that

1 there is no -- or that the issue that ZHP had previously
2 identified with the NDMA impurity is confined to new process
3 API, meaning there is no known issue with old process API at
4 this time that Torrent has been notified of. And --

5 (Interruption in transmission.)

6 (Off-the-record discussion.)

7 (The court reporter read back.)

8 SPECIAL MASTER VANASKIE: Are you able to reconstruct
9 your thoughts, Jacob?

10 MR. RAE: I'll just briefly summarize my thoughts,
11 which were, that given the time period in which this is
12 situated, we think that framing this question in terms of
13 verification is unfairly prejudicial and will be confusing to
14 the jury.

15 MR. NIGH: And, Your Honor, my point yet again is that
16 just because ZHP has declared to Torrent that their old process
17 is free of genotoxins does not mean Torrent shouldn't
18 independently verify.

19 And it's interesting, too, because even Dawn Chitty
20 herself, we're going to see more emails where she's saying we
21 need to independently verify this information. So --

22 SPECIAL MASTER VANASKIE: Yes, I'll overrule the
23 objection.

24 (Simultaneous speakers.)

25 SPECIAL MASTER VANASKIE: I think that takes us to

1 page 225 now. Hold on. There's a counter at page 224, but
2 that's not objected -- yes, it is objected to.

3 224, line 21 to 225, line 12.

4 MR. NIGH: Your Honor, I think this is actually with
5 all -- I don't see that this is responsive to any of the other
6 questions that we've designated here.

7 SPECIAL MASTER VANASKIE: Jacob?

8 MR. RAE: Your Honor, this is a critical
9 clarification. Plaintiffs are asking questions about the
10 historic existence of GCMS as a testing methodology -- as a
11 test method, generally, and it's important to understand that
12 GCMS stands for gas chromatography/mass spectrometry. It's
13 basically a combination of two different forms of testing. And
14 what Ms. Chitty is explaining here is this isn't some
15 monolithic thing where you just send material out to these two
16 machines and you get back an answer. You have to have a test
17 method calibrated to the result that you want to get and the
18 thing that you're trying to investigate.

19 And if we're going to have questions about the
20 existence of GCMS testing and its use to test for nitrosamines
21 in products other than valsartan, it's important for the jury
22 to be understanding that it's -- what GCMS is and what it is
23 not.

24 MR. NIGH: Your Honor, I will withdraw the objection,
25 with the understand that here, yet again, we can even see in

1 this answer, that she is not just a regulatory mouthpiece but
2 now she's obviously weighing into analytical chemistry as well.
3 But we'll allow it in.

4 SPECIAL MASTER VANASKIE: All right. It does come in,
5 would come in without the withdraw, but there is no objection
6 here, so the information on page 224, line 21 to page 225,
7 line 12 comes in.

8 Now I think that takes us to 225, line 14. Oh,
9 there's a question that starts at 225, line 14.

10 MR. RAE: Correct, Your Honor. And --

11 SPECIAL MASTER VANASKIE: 17 -- go ahead.

12 MR. RAE: This is related to the reasons why we think
13 that the counter is important but the -- we think that the
14 question is confusing and risks misleading the jury in the idea
15 that GCMS testing is used for nitrosamines without
16 clarification as to the scope of what is -- like, the nature of
17 GCMS testing and the fact that using it to identify
18 nitrosamines in one drug substance or kind of chemical
19 substance does not equate to using it to identify nitrosamines
20 in all drug substances.

21 SPECIAL MASTER VANASKIE: Daniel?

22 MR. NIGH: And, Your Honor, we can see, even from the
23 counter-designation the defendants wanted, how important this
24 is because it shows her knowledge that she believes at the time
25 there actually wasn't any methods to be able to test for NDMA.

1 And if that were true, how in the world did Novartis, who
2 discovered this issue, find NDMA in the valsartan? Why?
3 Because we know it's not true.

4 Novartis sent it to a lab and they were able to test
5 and see that there is NDMA in valsartan. And that happened
6 months before any of these issues occurred. So that's why we
7 think this is important. It goes to show --

8 SPECIAL MASTER VANASKIE: I will overrule the
9 objection and allow this to come in.

10 I think that takes us to page 228, line 19.

11 MR. RAE: Yes, Your Honor.

12 And our objection here is it's a 403 issue but also a
13 foundation issue and the context here is this is questioning
14 about an email chain that, you know, as the question
15 establishes, Dawn Chitty is not on this email. So the question
16 is -- so there's a preface about what the email is and it says,
17 we've got supply chain people and procurement people as well as
18 you in the regulatory department.

19 Now, the following email they cut all those people
20 out, right? And what we're talking about, you can see who is
21 in this email chain, and then they go on to identify and
22 discuss the content of the portion of the email chain that
23 Ms. Chitty was not on and did not receive. And as you've
24 discussed several times before, Your Honor, establishing that
25 Ms. Chitty didn't see the subsequent portion of this email

1 chain is perfectly within the scope of a reasonable question;
2 but then asking her about what the content of that subsequent
3 email chain is, reading that content into the record and asking
4 her if she sees that content as it's being presented to her, is
5 improper.

6 SPECIAL MASTER VANASKIE: All right. Daniel?

7 MR. NIGH: Well, I guess in terms of that objection,
8 first off, to talk about who all was left off of this email and
9 her to say, yes, these are all the people left off the email,
10 that's, obviously, relevant -- I don't know if Jacob -- if
11 Mr. Rae is objecting to that now, just to be clear.

12 SPECIAL MASTER VANASKIE: Are you objecting to that?

13 MR. RAE: I think that asking her specifically about
14 who is on or is not on the email, rather than whether or not
15 she received or didn't receive the email is outside the scope
16 but I would be willing to kind of concede that the first
17 question and answer can come in here in the interest of trying
18 to find a place of compromise.

19 MR. NIGH: Well, it's not a compromise for me, though,
20 Your Honor, because I do think that part is relevant. But then
21 on top of that, obviously the information that's contained in
22 the email when everybody else is dropped off, when they're
23 talking about safety issues related to this product -- it's all
24 in the same email chain -- and then they drop everybody off the
25 email chain, other than the supply of the salespeople, the

1 people who are going to have a financial impact from the safety
2 decision, they drop off all the safety people and the business
3 people start discussing --

4 SPECIAL MASTER VANASKIE: Yes, I will overrule the
5 objection and allow it.

6 MR. RAE: And understanding your ruling, Your Honor, I
7 just want to kind of repeat something that I think we talked
8 about before, but Mr. Nigh is articulating arguments that
9 plaintiffs want to make, and plaintiffs will be able to make
10 those arguments at the places where lawyers are permitted to
11 make argument, but they shouldn't be able to make their
12 argument through questioning a witness about information that
13 the witness doesn't have personal knowledge of.

14 SPECIAL MASTER VANASKIE: No, I think this was an
15 appropriate question, and you need to establish a foundation
16 for your argument. So I think it's appropriate to say, hey,
17 all of a sudden the only one on this email chain are the
18 business people. I think that's appropriate.

19 MR. RAE: Yes, Your Honor, I agree, and that's why we
20 withdrew our objection here to page 228, line 19 to 229,
21 line 8, but then the next question is not establishing who's on
22 this email. It's asking -- it's reading the content of that
23 email to Ms. Chitty and asking, do you see that, about an email
24 that she wasn't on, and I think that's a different issue.

25 SPECIAL MASTER VANASKIE: I think that's just

1 prefatory to the question, and I will allow it.

2 MR. RAE: Understood, Your Honor.

3 SPECIAL MASTER VANASKIE: Are we now moving to
4 page 237?

5 MR. RAE: Yes, Your Honor. And, Your Honor, the
6 objection here is similar to the one before that -- the
7 question is framed as: This is almost a month after your
8 company learned that ZHP valsartan was, in fact, contaminated?

9 And that question is prejudicial because it doesn't
10 distinguish between the two types of valsartan API.

11 There's not one monolithic valsartan that was
12 discovered was contaminated in June of 2018. In late June of
13 2018, it was discovered that new process valsartan API was
14 contaminated. It was not discovered until August of 2018 that
15 old process valsartan API was contaminated.

16 And if plaintiffs are going to ask questions about the
17 timing at which discoveries were made about the impurity, they
18 need to be precise with respect to which process that relates
19 to.

20 MR. NIGH: Your Honor, the defendants are going to
21 have ample opportunity time and time again -- Torrent, I'm sure
22 it's going to be in their opening argument. They're going to
23 have many times to clarify when old process they believe was
24 discovered to be contaminated, when new process was discovered
25 to be contaminated. This isn't misleading.

1 SPECIAL MASTER VANASKIE: Yes, I will overrule the
2 objection.

3 Now I think we're on page 239.

4 MR. RAE: Actually, our objection here is only to the
5 question at page 240, lines 8 to 18.

6 SPECIAL MASTER VANASKIE: Okay.

7 MR. RAE: And the question here, our objection is a
8 form objection, a 403 objection, primarily about the fact that
9 this question, which is framed as an ultimate duty, calls for a
10 legal conclusion and invades the province of the judge and the
11 jury.

12 SPECIAL MASTER VANASKIE: Daniel?

13 MR. NIGH: Your Honor, I think the answer cures any
14 sort of concern that there might be with "ultimate duty" in the
15 question because she says we have the duty to confirm that it
16 is meeting specifications that are in place at the time.

17 SPECIAL MASTER VANASKIE: I think the question is
18 proper. I understand the objection, but I think a jury of
19 laypersons listening to this won't be dissecting it as tightly
20 as you are perhaps, Jacob.

21 So I will allow the question and the answer on
22 page 240.

23 Now are we up to page 262?

24 MR. NIGH: I believe so.

25 MR. RAE: We had a counter on page 259.

1 SPECIAL MASTER VANASKIE: On 259, yes, I see that.
2 Lines 5 to 16.

3 MR. NIGH: Your Honor, we have no -- we're fine
4 letting this come in. We'll withdraw the objection.

5 SPECIAL MASTER VANASKIE: All right. Objection is
6 withdrawn.

7 259 lines 5 through 16 will be admitted -- will be
8 played for the jury, I should say.

9 So that takes us now to page 262, lines 2 to 6 and
10 lines 9 to 11.

11 MR. RAE: Yes, Your Honor. And our objection here is
12 that this is unfairly prejudicial and confusing, and that it --
13 the question itself mischaracterizes the record. The question
14 asks and is predicated on the idea that Torrent was telling the
15 FDA and its customers that there's no NDMA in Torrent's
16 product.

17 And the issue here is that -- as you can see in the
18 counter that we have on page 259, what Torrent actually
19 communicated to its customers is there are no Torrent products
20 in the U.S. that use this route of synthesis with -- where the
21 impurity is identified.

22 Those are very different things. What Torrent said is
23 there's -- had communicated to customers is there's a known
24 impurity that's process-related in new process valsartan API,
25 and we don't use new process valsartan API. That's not an

1 affirmative statement that there is no impurity existing in old
2 process API. It's statement of fact as to what was known at
3 the time about new process API.

4 MR. NIGH: Your Honor, the point is that statement is
5 misleading because of its omission. That's the whole very
6 point of it.

7 And then when we're asking Dawn Chitty herself, she
8 recognizes those communications happen on the same day.

9 SPECIAL MASTER VANASKIE: I will overrule the
10 objection. So 262, lines 2 through 6 and 9 through 11 are in.

11 I think we now are up to page 290.

12 MR. RAE: Yes, Your Honor. And our objection here
13 is -- the question here is not actually -- the first statement
14 is a statement by the attorney -- attorney commentary that's
15 inconsistent with the record.

16 So it begins: Okay, August 3rd you learned NDMA is in
17 Torrent's product.

18 And that's not true. What Torrent learned on
19 August 3rd is that the process-related -- that there was a
20 process-related impurity that had been identified in old
21 process API, but Torrent did not know at that time whether or
22 not that impurity that existed in the old process API was in
23 batches -- was in every batch of old process, was only in some
24 batches, whether or not it was in the batches that Torrent had
25 actually used in its process. None of that information was

1 known at that time.

2 SPECIAL MASTER VANASKIE: Daniel?

3 MR. NIGH: Your Honor, looking at the answer, I don't
4 think that the question is improper. I will correct the
5 record, though. Torrent is notified on August 3rd that they
6 have NDMA in old process. The only part of that that I would
7 agree with is potentially they didn't know which products; if
8 it's in all of it or some of it. But they know there's NDMA in
9 old process at that time.

10 MR. RAE: I would agree. And if the question were --
11 if the attorney commentary at the beginning of this question
12 was, okay, August 3rd, you learned NDMA is in old process API,
13 that would not be objectionable.

14 And I think the simple way to cure this prejudice here
15 and to resolve our objection would just be to begin the
16 question with, "on August 3rd, does Torrent pull that product
17 off the market," which I think is not an objectionable
18 question. That's a fact question that Dawn Chitty can
19 perfectly reasonably answer.

20 MR. NIGH: Well, I disagree because it needs to be
21 hand in hand with them learning about the NDMA, and then she
22 answers the question the way in which she felt that it should
23 be answered.

24 MR. RAE: And, Your Honor, I just want to observe,
25 there is a form objection that was made on the record during

1 this deposition. Counsel was notified of the problem with
2 their question. They could have rephrased to fix the language
3 to add an accurate preface to their question, and they chose
4 not to.

5 SPECIAL MASTER VANASKIE: Yes, I will sustain the
6 objection or ask that you limit the question to, "On August 3,
7 does Torrent pull that product off the market," and let the
8 answer come in after that.

9 MR. NIGH: Okay. We agree, Your Honor, would strike:
10 "19, okay, August 3rd, you learned NDMA is in Torrent's
11 product?"

12 SPECIAL MASTER VANASKIE: Right. Okay.

13 Now 291.

14 MR. RAE: So I think our objection here is that this
15 is a confusing question because it collapses time frames in a
16 way that's misleading, confusing, and unfairly prejudicial to
17 us, that trace amounts at that time was not something that
18 Torrent had any knowledge or awareness of exactly what it
19 meant.

20 Whether or not it was later discovered that those
21 trace amounts were -- had a certain relationship with interim
22 FDA thresholds that I believe had been established by this
23 point in time is kind of a different question.

24 And again, there's a bunch of facts leading into this
25 question that are not problematic to come in in front of the

1 jury, and we haven't objected to them in other contexts in
2 which they've come in front of the jury. But the way that this
3 particular question is phrased is highly prejudicial because of
4 the time period situation in which it is framed in and the
5 knowledge that Torrent had at that point in time.

6 MR. NIGH: Your Honor, it's obvious that Torrent and
7 other defendants have taken the tack to try to inject the
8 terminology "trace amounts" in all of these answers, and we can
9 see that.

10 And so here when she says "trace amounts," she's the
11 one who supplied trace amounts in her answer right above.

12 SPECIAL MASTER VANASKIE: Right.

13 MR. NIGH: We get to qualify what that means in the
14 very next question and answer.

15 SPECIAL MASTER VANASKIE: I will overrule the
16 objection and allow the question.

17 So 291, lines 11 through 14 and lines 17 through 22
18 are in.

19 I think now we go to page 295.

20 MR. RAE: And, Your Honor, I think the issue here is
21 this is an argumentative question. It's also not accurate with
22 the record and the evidence that's going to come in in front of
23 the jury.

24 Torrent wasn't doing nothing at this point in time.
25 Torrent was doing a wide variety of things at this point in

1 time, some of which Ms. Chitty testifies to and some of which
2 other Torrent witnesses have -- like Dr. Jaiswal have testified
3 to.

4 MR. NIGH: Your Honor, colloquially the question is
5 perfectly valid to this jury, and then there's an answer that
6 is given that the jury can take away and look at and say it's
7 nothing. Because essentially the steps that you're going to
8 hear that occurred, I could absolutely see a jury looking at
9 that and saying that is nothing. Because what occurred between
10 August 3rd to when they had to pull the product off the shelf
11 was the FDA testing the product themselves and telling them
12 they needed to pull it off the shelves.

13 That's what occurred. So what did Torrent effectively
14 do when they learned about this information? Effectively
15 nothing. And we asked it to her that way, and she can answer
16 it the way that she did.

17 MR. RAE: That's an attorney argument. Plaintiffs
18 will have an opportunity at trial to make their argument.
19 We're not saying they're not allowed to make that argument,
20 whether or not facts support it, but that doesn't permit them
21 to ask argumentative questions of witnesses. And the issue
22 here is the argumentative nature of the question, the fact that
23 the question is being used to present their argument instead of
24 to identify facts.

25 SPECIAL MASTER VANASKIE: Well, I don't find the

1 question on its face to be unduly argumentative, and the
2 witness was able to answer the question and the follow-up
3 questions that come after it, so I'll overrule the objection.

4 To be clear, what will come in is 295, lines 7 through
5 9, lines 12 through 21, lines 23 through 24; and then page 296,
6 lines 1 through 9.

7 And so are we now up to page 340?

8 MR. RAE: I think that's correct, Your Honor. And
9 Your Honor, this is, I think, a pretty simple objection. I
10 believe Ms. Papantonio, who is taking this deposition, just
11 misspoke here, and that makes this question, the question at
12 340, lines 2 to 7, objectionable.

13 Earlier in this deposition -- I can point you to the
14 testimony -- there was testimony that establishes that there
15 was NDMA being measured at around 63.4 ppm and that 63.4 ppm,
16 if you divide it by 0.3 gets you to 200 times --

17 MR. NIGH: Can I stop you there because I agree.
18 We'll withdraw the objection to the question.

19 SPECIAL MASTER VANASKIE: Okay. So the question on
20 page 340, lines 2, and the answer that ends on line 7 of that
21 page are out.

22 MR. NIGH: Yes, Your Honor.

23 SPECIAL MASTER VANASKIE: Now, I have a
24 counter-designation, and maybe that's out now too at page 340,
25 lines 8 to 11, and then the answer's 14 to 20.

1 MR. RAE: Your Honor, I think that counter-designation
2 is still relevant to the testimony designated on page 339, and
3 the testimony on page 339 is what the FDA is telling Torrent
4 on -- I think this is on August 16th, but it might be on
5 August 17th. I could be mixing up those two days.

6 And this is kind of Ms. Chitty clarifying and being
7 asked and then clarifying that this is the first time that
8 Torrent has seen any test results showing that Torrent's
9 valsartan product or the API that Torrent was using in its
10 valsartan product, as opposed to some batch of old process API,
11 contained NDMA.

12 MR. NIGH: Your Honor, we withdraw our objection. I
13 think that this counter is fine.

14 SPECIAL MASTER VANASKIE: All right. So the record is
15 clear, the question at lines 8 through 11 on page 340, and the
16 answer at lines 14 through 20 are in.

17 MR. NIGH: That's right.

18 SPECIAL MASTER VANASKIE: And now I think we're up to
19 page 354.

20 MR. RAE: Yes, Your Honor. And as you can see, this
21 is a bit of a weird objection.

22 SPECIAL MASTER VANASKIE: Yes.

23 MR. RAE: The objection here is that the document that
24 gets introduced here, Torrent 94, is essentially a
25 demonstrative created by plaintiffs' counsel that has their

1 articulation of the timeline of events as phrased and framed by
2 plaintiffs' counsel, and our position is not, to be clear, that
3 one can't use a demonstrative in an appropriate fashion in a
4 deposition, just like you could at trial, to record testimony
5 the witness is giving and then you can present that in a visual
6 or recorded form. But that's not what this document is.

7 It gets put in front of Ms. Chitty. There's then
8 questions asked about the way in which things are phrased in
9 the document itself and the chronology that plaintiffs' counsel
10 prepared, and Ms. Chitty explains that that framing of those
11 issues is inaccurate. And so the entire use of this document
12 is inappropriate because it works backwards. It works from
13 plaintiffs' counsel version of events and then asks Ms. Chitty
14 about it and it's also improper because it doesn't actually
15 reflect the testimony that Ms. Chitty has given.

16 MR. NIGH: Your Honor, I'm reading the questions and
17 answers below, though. It looks to be an aid in the questions
18 on the timeline, and she gives answers that are informative.

19 MR. RAE: And, Your Honor, just to be clear, I think
20 our objection here, as noted in the objection, is really
21 primarily about the document itself, which plaintiffs have
22 designated themselves.

23 And page 354, line 15 is something that it seems they
24 want to use as an exhibit to present to the jury, and certainly
25 that introduction of the document -- I have to go back and look

1 at whether or not the video of this deposition includes putting
2 the document up on the screen, but we certainly would object to
3 any display of that document in connection with this line of
4 questioning.

5 The line of questioning itself, as you can see, we
6 don't have any objections to the actual questions and their
7 answers here.

8 SPECIAL MASTER VANASKIE: What's wrong with the
9 document itself as a demonstrative?

10 MR. RAE: As I said, the document itself -- and I can
11 pull it up and show it to Your Honor. I would just need a
12 second to get it up on the screen.

13 Can I have that?

14 SPECIAL MASTER VANASKIE: Yes, you can.

15 MR. RAE: Do I have the ability to share my screen?
16 I'm not a Teams novice, so --

17 SPECIAL MASTER VANASKIE: I'm a Teams novice too. Is
18 it a document you could email to me?

19 MR. NIGH: Your Honor, if I can --

20 SPECIAL MASTER VANASKIE: I have a document up in
21 front of me now.

22 Go ahead, Daniel.

23 MR. NIGH: You know, to the extent, it sounds like
24 Torrent's argument here is that there may be some factual -- in
25 their view, some things that are factually incorrect, but we go

1 through this document throughout the testimony, as you'll see
2 following the next pages, and she gets to remark from her
3 viewpoint if the information is accurate or not, and then
4 there's questions that the timeline itself is also used to be
5 able to ask questions of this document.

6 So I think the document is fair. It's a timeline, a
7 visual aid that assists in the questioning of the witness. And
8 to the extent that she has disputes about some of the data that
9 are in it, she can -- she raises those in the testimony.

10 MR. RAE: Your Honor --

11 SPECIAL MASTER VANASKIE: Jacob, what's your problem
12 with the document?

13 MR. RAE: This is an attorney-created document that
14 was created prior to the deposition. It's being shown to
15 Ms. Chitty at her deposition. It misstates aspects of the
16 record.

17 For example, the first entry here indicates that on
18 June 20th, 2018, ZHP notified Torrent of NDMA in valsartan API.
19 That's not true.

20 On June 20th of 2018, ZHP notified Torrent that there
21 was a previously unknown impurity with genotoxic potential that
22 existed in valsartan API that had been discovered in valsartan
23 API. Those are different things, and the jury should not be
24 seeing an attorney-created document that misstates the factual
25 record in connection with this questioning of Ms. Chitty or at

1 all.

2 SPECIAL MASTER VANASKIE: All right. Well, I think
3 that's a matter that can be cleaned up by the time of the
4 trial. I don't think there's anything improper about her
5 testimony.

6 MR. RAE: Correct, Your Honor. Our objection here is
7 to the designation line that relates to this document
8 specifically and to any use of this document on the screen or
9 the showing of this document to the jury, not to the
10 substantive questions and answers, as plaintiffs' counsel went
11 through the document with Ms. Chitty.

12 MR. NIGH: But, Your Honor, they need the document.
13 And while I would agree with defense counsel that June 20th is
14 not ZHP notifies Torrent NDMA in valsartan API, you could see
15 in the questions that are designated that the witness makes
16 that clear and the understanding is made clear between the two
17 on the record.

18 SPECIAL MASTER VANASKIE: Yes, the testimony comes in.
19 The objection is overruled. As far as this demonstrative
20 exhibit, I think you need to meet and confer and clean it up.

21 MR. NIGH: Yes.

22 SPECIAL MASTER VANASKIE: But I don't see anything
23 improper about the questions and answers.

24 MR. NIGH: There may be some ways to clean it up, but
25 the key is that, you know, they can actually see this

1 demonstrative, and it's cleaned up by the witness on the
2 record. That's what I'm saying.

3 I don't know that necessarily the demonstrative has to
4 be cleaned up because it's all read out to the witness, and the
5 witness has every opportunity to clean it up.

6 SPECIAL MASTER VANASKIE: Yes. I understand that.

7 MR. NIGH: I mean, I guess one option could be we
8 could even put next to it "witness says," and we could put on
9 there -- if that's what we really need in the demonstrative.
10 But otherwise, the witness is cleaning it up in the questions.

11 MR. RAE: Your Honor, I don't think that -- and again,
12 to be clear, our objection is to the document itself, not to
13 the questions and answers.

14 SPECIAL MASTER VANASKIE: Right.

15 MR. RAE: I don't think there's any way to cure the
16 problems with this document retrospectively because it's the
17 document that was used during the deposition. And, you know,
18 this is -- again, if we were doing this live -- and Ms. Chitty
19 will be testifying live at trial, plaintiffs can ask her
20 questions, they can create a demonstrative during that
21 questioning. If they write down something inaccurate, we would
22 then object to it and, like, that issue would get sussed out
23 live.

24 And the problem here is plaintiffs don't get to create
25 their own version of events that's not consistent with the

1 factual record or with Ms. Chitty's testimony and place that in
2 front of the jury. And they certainly don't get to place that
3 in front of the jury as if it's a factual recitation of the
4 timeline.

5 MR. NIGH: Your Honor --

6 SPECIAL MASTER VANASKIE: So your objection is to the
7 jury seeing this exhibit while also hearing Dawn Chitty's
8 testimony?

9 MR. RAE: Correct. And I think if there's a little --
10 like, I think the prejudice here is much less significant if
11 the document is simply not shown, maybe we have to cut video
12 for three questions if the video is going to be on the screen
13 instead and this document was showing up on it, that the jury
14 can still hear the testimony, the jury can hear the questions,
15 they can hear the answers, maybe the questions will be a tiny
16 bit artificial and confusing because they'll be referencing a
17 document that the jury is not seeing, but I think that's a much
18 smaller problem than the jury seeing this document. And it
19 gets all of the questions that Mr. Nigh wants to designate in
20 front of the jury in front of the jury, all of the testimony
21 comes in, the document doesn't.

22 MR. NIGH: And, Your Honor, obviously the purpose of
23 the testimony is the timeline. It's to make this simple and
24 concise where a jury can see the timeline. And so that's
25 what's happened here at the end.

1 Now, the only thing is, is that even in a
2 demonstrable, if the defendants take notice or issue with the
3 demonstrable, they have multiple options they could have done
4 in this. They could have re-questioned and if they felt they
5 needed to go further, they could have had their own
6 demonstrative with substituting this out. But it's not
7 misleading because the witness answers the question and
8 clarifies it.

9 So the reason I say it's not misleading is this
10 information is read out to the witness. And the jury can see
11 this information at the same time. They'll see exactly what's
12 being read off. And the jury is going to hear the witness's
13 answer and say, well, it doesn't actually say -- I don't know
14 that that's when we discovered Torrent NDMA in valsartan. And
15 then you can see the next -- oh, okay, well, that's when the
16 impurities -- they know that the impurity - they get notified
17 of a potential impurity.

18 It's clear in the record. So just because the
19 demonstrative might have that one little piece that they don't
20 like the information, the demonstrative goes along with the
21 witness's testimony, and it doesn't mislead the jury.

22 SPECIAL MASTER VANASKIE: Well, I think the answer to
23 this is you can come up with a curative -- or an instruction to
24 the jury at the time this is played that points out the
25 inaccuracies of the exhibit, but otherwise the testimony comes

1 in. Or tells the jury -- when it says NDMA was in the product,
2 no, an impurity was found in the product. Whatever the
3 terminology is.

4 MR. NIGH: Yes.

5 SPECIAL MASTER VANASKIE: Potentially genotoxic
6 impurity. And the witness cleared that up. I think there are
7 ways to handle this.

8 MR. NIGH: I agree, Your Honor. If we could meet and
9 confer as to how to handle the document.

10 SPECIAL MASTER VANASKIE: Yes. All right?

11 Could we move -- I think the next one is a
12 counter-designation at page 377, line 21. And this is your
13 objection, Daniel.

14 MR. NIGH: Yeah, we found it to be -- it's cumulative.
15 We've asked witnesses before and they've gotten this answer in
16 before. That's why we removed it.

17 MR. RAE: Your Honor, I'm not sure of where Mr. Nigh
18 thinks that this -- what Mr. Nigh thinks this is cumulative of,
19 but I don't think this question has come up before in this
20 deposition.

21 SPECIAL MASTER VANASKIE: I will overrule the
22 objection. I think it's proper.

23 MR. NIGH: And just to be clear, it did come in as a
24 counter earlier to this, the same idea that we have -- and so
25 that's why we took it out of the designation already too. I

1 could get the line, the page and the --

2 SPECIAL MASTER VANASKIE: No, that's all right.

3 MR. NIGH: -- line if you think that's important, but
4 I understand your ruling.

5 SPECIAL MASTER VANASKIE: And now we have 378, line 20
6 to 22. And the answer is on 379, lines 1 through 5. And this
7 is your objection, Jacob.

8 MR. RAE: Yes, Your Honor. I think this question is
9 likely to be unfairly prejudicial and confusing to the jury in
10 the -- the framing of this is other organizations were able to
11 significantly faster than Torrent to develop a test method to
12 identify nitrosamine impurities in valsartan API. And I think
13 that the issue here is no other organization that was in a
14 similar position to Torrent, no finished dose manufacturer that
15 I'm aware of or that there's record evidence of developed a
16 test to identify nitrosamine impurities faster than Torrent
17 did.

18 It is true that ZHP and the FDA and Novartis, all of
19 whom are either people who make valsartan API themselves, or
20 the FDA with all of the knowledge and resources that are
21 available to the FDA, including as to how both ZHP and
22 Novartis, as well as other valsartan API producers,
23 manufactured their valsartan API developed tests faster than
24 Torrent did.

25 But kind of framing this as an abstract is going to

1 confuse the jury into thinking that there might be folks out
2 there who were in a position similar to Torrent that were able
3 to do that.

4 MR. NIGH: Judge, this is not being offered to say
5 that Teva developed a method or that Princeton -- although
6 Princeton is a finished dose manufacturer, they would have been
7 -- that's not the reason it's being offered. I don't think
8 it's misleading.

9 We've already established in this testimony other
10 organizations -- independent lab, Solvias, was able to do it.
11 Novartis, when they detected an unknown peak, they sent it to
12 Novartis. Novartis tested it, they found -- that's how the
13 whole thing gets discovered. Then ZHP is able to do it. Then
14 the FDA is able to do it. And there's multiple organizations
15 that are able to do it.

16 And so the question now is, are you aware that all
17 these other organizations are able to do it; but she just --
18 that counter-designation that just came in, we get to counter
19 that. It's already --

20 SPECIAL MASTER VANASKIE: Yes, I will overrule the
21 objection. So 378, lines 20 through 22 and 379, lines 1
22 through 5 are admissible.

23 Now, I think we're to the counter on 381, line 8?

24 MR. RAE: That's right, Your Honor. And I think we're
25 also, I'm sure everyone will be pleased to know, getting very

1 close to the end of Ms. Chitty.

2 SPECIAL MASTER VANASKIE: Yes.

3 MR. NIGH: We have no issue. We'll withdraw our
4 objection on that counter.

5 SPECIAL MASTER VANASKIE: All right. So the testimony
6 at page 381, lines 8 through 13 is coming in.

7 Now I think we're up to page 382, line 23 to page 383,
8 line 17.

9 MR. RAE: Your Honor, I think -- our objection is
10 on -- we have an objection on page 383, line 15 to 23, to the
11 question and answer there.

12 SPECIAL MASTER VANASKIE: Okay.

13 MR. RAE: And this is a familiar topic for Your Honor
14 at this point. This is the cheap versus cheaper issue where,
15 again, Judge Bumb sustained -- or granted our motion in limine
16 with respect to referring to the ZHP API as cheap rather than
17 cheaper.

18 And this is another instance of plaintiffs asking a
19 question framed in terms of the API being cheap rather than it
20 being cheaper. And that testimony, Judge Bumb has already
21 ruled is, unfairly prejudicial and should not be part of this
22 case.

23 SPECIAL MASTER VANASKIE: Yes, I'll sustain the
24 objection.

25 MR. NIGH: Your Honor, if I may, we're not actually

1 quoting the document here.

2 SPECIAL MASTER VANASKIE: Well, that's all right.

3 You're doing the same thing.

4 MR. NIGH: We're quoting prior testimony, and then the
5 witness even clears up the answer and says I remember
6 discussing that we were buying API from ZHP that was less
7 costly than our other supplier.

8 So whatever sort of unfair prejudice may have happened
9 from the word "cheap" versus "cheaper," which I completely
10 disagree with how the defendant Torrent has contextualized the
11 judge's ruling here. It's a very, very specific minute ruling.
12 Misquoting the email. It's not -- and then the witness even
13 clears up whatever unfair prejudice may have actually possibly
14 occurred.

15 SPECIAL MASTER VANASKIE: Well, the witness does clear
16 it up, that's for sure. All right. I'll reverse my ruling and
17 allow this to come in. That use of the word "cheap" is
18 problematic.

19 MR. RAE: Your Honor, I agree that Ms. Chitty's answer
20 accurately states the email, but I don't think that fully cures
21 the prejudice of plaintiffs being able to misquote the email
22 and misuse the email. And like -- I don't think that there's
23 any appropriate usage for this question, I don't think it needs
24 to be coming in front of the jury, and I think that Judge Bumb
25 has already addressed this issue and ruled that plaintiffs

1 cannot ask questions like this.

2 And it doesn't matter if the witness is aware enough
3 of the context of the email that she was shown in the morning
4 of the same day to correct the misquoted question or not. The
5 question isn't allowed to be asked in the first place.

6 MR. NIGH: Again, I think --

7 SPECIAL MASTER VANASKIE: You know what, Jacob, I
8 think you're right. I will strike the question.

9 MR. RAE: Thank you, Your Honor.

10 MR. NIGH: Your Honor, does the testimony come in?
11 Because that's the issue. This sets the foundation for what's
12 happening next. It realerts that -- reorients to what's
13 happening next.

14 SPECIAL MASTER VANASKIE: We'll let the answer come
15 in. So --

16 MR. NIGH: Okay.

17 SPECIAL MASTER VANASKIE: -- it will start at line 11
18 or continuation at line 11: And at this time, May of 2017, ZHP
19 is supplying valsartan API to Torrent, right?

20 Yeah, I believe so.

21 And then just continue: I remember discussing that we
22 were buying API from ZHP that was less costly than our other
23 supplier.

24 I think that gives you both --

25 MR. NIGH: Thank you, Your Honor.

1 SPECIAL MASTER VANASKIE: All right?

2 MR. RAE: I'm not going to push back against that --

3 SPECIAL MASTER VANASKIE: All right. Thank you.

4 MR. RAE: -- suggestion, Your Honor.

5 SPECIAL MASTER VANASKIE: Now, are we at page 382,
6 line 23? No, moving on --

7 MR. RAE: I think we're at page 387, line 16 to
8 page 388, line 4.

9 SPECIAL MASTER VANASKIE: Okay.

10 MR. NIGH: And, Your Honor, I believe -- and I don't
11 want to speak for Mr. Rae, but I believe that a lot of these
12 lacks foundation are going to be, you know, an argument that
13 she's not qualified to vet -- you know, to speak to ZHP's -- or
14 to the FDA investigation report.

15 But I will just say that even though the witness
16 states it's not her job to vet suppliers and contractors, she,
17 you know, numerous time testified she's hired, she's the head
18 of the regulatory and compliance, she testified earlier that it
19 was their duty to ensure their API suppliers were in compliance
20 as well. There's multiple different ways in which this
21 reflects in her role as compliance.

22 SPECIAL MASTER VANASKIE: Yes, we have a series of
23 lacks foundation objections starting at page 387, the question
24 at line 16. And we have some counter-designations too. I
25 mean, my initial reaction to all of this was that it all comes

1 in.

2 MR. RAE: Your Honor, I think to start with -- because
3 I think there may be some different issues here, but starting
4 just with this first question and answer, you can see in the
5 answer -- this is a question about an FDA inspection report
6 that was issued to ZHP, not to Torrent, about ZHP's
7 manufacturing facilities.

8 And Ms. Chitty's answer is, again, because she's said
9 this earlier in testimony that wasn't designated: I don't know
10 if I've specifically seen this report since it wasn't part of
11 my job to vet suppliers and contractors.

12 Ms. Chitty is testifying to the fact that she lacks
13 personal knowledge of the information that's being presented to
14 her that she's asking -- that's being read into the record that
15 she's asking to affirm the content of. And whether or not
16 plaintiffs could get this information from another source,
17 whether or not they could ask different questions of Ms. Chitty
18 is not the issue in this objection.

19 The issue is, you can't take a document that you
20 haven't laid a foundation for asking a fact witness about and
21 ask them what's in that document if there is no personal
22 knowledge of it.

23 MR. NIGH: And I believe that that scope on foundation
24 for a document is not the scope of the rule itself. There are
25 many ways you could lay a foundation when they haven't seen a

1 document, and one of them would be in her role, which we've
2 discussed all these various ways -- she's the mouthpiece to the
3 FDA. She talks about she's safety and compliance, she's been
4 involved in communication, she's getting, you know, emailed
5 about how do we communicate things to clients. I mean, there's
6 all these different facets of her job that this is attached to.

7 So the very fact that she hasn't seen this document
8 itself doesn't obscure the questions that are coming later,
9 where here, again, I come back, there was that one document we
10 didn't ask some questions and say, were you aware of this
11 information, when we are asking those questions, was this
12 information ever conveyed to you.

13 MR. RAE: And, Your Honor, again, I heard a lot of "we
14 could lay a foundation other ways" there, but I didn't hear a
15 "we did lay a foundation for this line of questioning"
16 statement by Mr. Nigh. I don't see it in the designations, and
17 I certainly don't see it in the question and answer that we're
18 looking at right now.

19 MR. NIGH: Judge, just to be clear, that foundation
20 that I'm talking about when I said "could," that foundation was
21 laid. We've gone through this whole transcript. We've talked
22 about how she's safety and compliance, we saw how she's
23 receiving emails, we saw how she's the one person that's
24 communicating with the FDA on some calls, some calls she's only
25 got one other person. I mean, all of that has been laid

1 throughout this whole deposition.

2 MR. RAE: Your Honor, this -- I'm not sure that this
3 holds true for every question that gets asked about this
4 document, but this first question, I know for the next couple
5 because I just looked down at them, the questions, again, are,
6 "here's what the document says, do you see that?"

7 To ask that question of a fact witness, you need to
8 establish the fact witness knows what that document says, that
9 they have personal knowledge of the document.

10 MR. NIGH: Yeah. Again, "here's what the document
11 says, do you see that?"

12 Yes.

13 It's orienting her through.

14 And then later it's asked, "Were you aware of any of
15 that information?"

16 Page 387: When was the first time you learned that
17 ZHP could not ensure integrity of its analytical system?

18 That's lines 21 to 24. There's many of these that are
19 all throughout here.

20 SPECIAL MASTER VANASKIE: Yes. As I said, when I went
21 through this line of inquiry, that I was not persuaded by the
22 lacks foundation objections. Unless you have some other
23 objection, I would overrule the foundation objection and allow
24 these questions and answers to be played for the jury unless
25 I'm persuaded there's some other problem with the line of

1 inquiry.

2 MR. RAE: No, Your Honor. I think the foundation
3 objection was the objection that we were making here.

4 SPECIAL MASTER VANASKIE: All right. And the counters
5 all come in as well.

6 MR. NIGH: Yes, Your Honor. I believe that goes
7 through to 408, line 24, but I don't want to speak for Mr. Rae.

8 SPECIAL MASTER VANASKIE: That's what I have.

9 MR. RAE: I'm just -- my pause is just to make sure
10 that I agree with that position, so if you could give me a
11 second to --

12 SPECIAL MASTER VANASKIE: Yes, absolutely.

13 MR. NIGH: And just to clarify, page 387, line 16
14 through to page 408, line 24.

15 SPECIAL MASTER VANASKIE: Correct. There are some
16 other objections at 408, 413 we'll talk about.

17 MR. RAE: Your Honor, I agree that your overruling of
18 our objection applies through page 408, line 24.

19 SPECIAL MASTER VANASKIE: All right. So now we have
20 an objection at page 413, line 21.

21 MR. RAE: Yes, Your Honor. And this is a similar
22 objection to the one that we made before, which is that this is
23 a prejudicial question that invades the province of the judge
24 and the jury by asking about ultimate jobs and
25 responsibilities.

1 SPECIAL MASTER VANASKIE: And the same ruling, I'll
2 overrule the objection.

3 And coming in will be the testimony -- the question at
4 lines 21 through 24 of page 413 and the answer at lines 3
5 through 6 of page 414.

6 And I think that concludes the issues with respect to
7 Dawn Chitty's deposition.

8 MR. RAE: Yes. And Your Honor, I just want to make
9 one line of cleanup from a record perspective. I should have
10 done this before we started talking about Ms. Chitty's
11 deposition, but I just want to make it clear that Torrent has
12 objected to the playing of Dawn Chitty's deposition and
13 Dr. Jaiswal's deposition by video due the fact that they're
14 going to be appearing live at trial.

15 I think that's an issue that Judge Bumb has gone back
16 and forth on at this point, and it's not entirely clear where
17 we're going to end up on that. And I'm just speaking here to
18 preserve the fact that we continue to have that objection, not
19 asking Your Honor to address it here.

20 And obviously we've gone through this process to make
21 sure that we're prepared regardless of how Judge Bumb
22 ultimately chooses to approach this.

23 SPECIAL MASTER VANASKIE: Understood.

24 MR. NIGH: And Your Honor, we believe that her ruling
25 has been made. Thank you.

1 SPECIAL MASTER VANASKIE: All right. We'll take a
2 15-minute recess at this time and pick up with Jocelyn Rivera.

3 (Brief recess taken from 2:39 p.m. to 2:54 p.m.)

4 MR. NIGH: I think this one might be another good one
5 to revisit on Monday. I'm going to take a look based on the
6 rulings that Your Honor has already made and we're going to
7 likely, you know, cut, you know, many designations here for
8 Rivera based on those rulings.

9 So rather than spend the time going through each one
10 that lacks foundation and issues like that, we have some of
11 this testimony already for other witnesses that's ruled
12 admissible and we may look at this and say, we'll just
13 dedesignate, you know, a decent amount of information on this
14 one.

15 SPECIAL MASTER VANASKIE: Yes, there's not a whole lot
16 there in this one.

17 MR. NIGH: There's not a lot, there's not. We
18 recognize and understand that, Your Honor.

19 SPECIAL MASTER VANASKIE: This is a first-time
20 deponent who didn't want to say anything.

21 MR. NIGH: Right.

22 MR. RAE: And, Your Honor, I would frame it more --
23 and I know we're not going to necessarily get into this today
24 so I'm not going to spend a lot of time on it, but I think it's
25 less didn't want to say anything and more was being asked about

1 questions that relate to responsibilities of other job
2 departments at Torrent that she just didn't know how to answer.

3 SPECIAL MASTER VANASKIE: All right. Well, like he
4 said, there's not a lot there, it wouldn't take long to go
5 through, we can defer it to Monday if you're both in agreement
6 on it.

7 MR. RAE: I'm certainly not going to push back the
8 idea that Mr. Nigh may be withdrawing a significant portion of
9 the testimony or some portion of the testimony that we're
10 objecting to, and that that could avoid us bothering Your Honor
11 with making unnecessary decision on that testimony.

12 SPECIAL MASTER VANASKIE: You're not bothering me, but
13 there's no need -- I really don't want to rule on matters that
14 are going to be withdrawn. So take a look at it over the
15 weekend.

16 I have to say, I don't see how all of this helps
17 plaintiffs much, other than to create an embarrassment for
18 Torrent.

19 MR. NIGH: Understood, Your Honor.

20 SPECIAL MASTER VANASKIE: Is that it then for today?

21 MR. SLATER: Hello, Judge. Adam Slater. How are you?

22 SPECIAL MASTER VANASKIE: I'm well. How are you?

23 MR. SLATER: I'm good. I think that is because I
24 think we wrote to you yesterday and offered you some times, and
25 you just need to let us know, to finish the ZHP witnesses. I

1 think if we haven't gotten them over to you yet, they're all
2 going to be to you I think today, the last of it.

3 SPECIAL MASTER VANASKIE: I got that one last night,
4 but I don't know what I received yet today. I haven't looked
5 at my email.

6 MR. SLATER: I think it's a total of three witnesses
7 that remain and we thought it made sense not to cram them in
8 today when we thought we would get to you very late in the day,
9 but at least give you a chance to look at them and then if you
10 can do it next week, to choose when you would like to hear us
11 to finish those.

12 SPECIAL MASTER VANASKIE: Yes. Let me -- we're
13 scheduled for Monday, Daniel; is that true?

14 MR. NIGH: I only said Monday -- I actually haven't
15 independently seen something of Monday. I remember in our
16 meet-and-confer Mr. Rae said that we were scheduled for Monday,
17 I believe. I may have misquoted this.

18 THE LAW CLERK: And, Judge, this is Loretta. I just
19 hadn't heard about Monday being scheduled so I was asking a
20 procedural question, should we get a text order out about
21 Monday with the time and the parties' deposition designations?

22 SPECIAL MASTER VANASKIE: Jacob, I had you scheduled
23 for Monday?

24 MR. RAE: I have something in my calendar indicating
25 there was something scheduled for Monday, but maybe it got

1 inadvertently added there and that was -- the confusion may
2 have originated from me having something in my calendar that I
3 have no idea how it got there. So --

4 SPECIAL MASTER VANASKIE: Well, I'd like to push
5 forward. I have time on Monday. I have nothing scheduled.

6 You're right, Loretta, it's not on the calendar, not
7 on my calendar, but I would like to, you know, keep this
8 process going. I cannot do it Tuesday or Wednesday. So let's
9 shoot for Monday at 10:00 a.m. All right?

10 MR. NIGH: Yes, Your Honor.

11 MR. SLATER: That works for us. And I see Nina is on.

12 Nina, I don't remember if that worked for you, Monday.
13 It works for us. If that's when the Judge has time, we'll make
14 ourselves available.

15 MS. ROSE: Yeah, I had a conflict on Monday morning,
16 but I can shift some things around if that's the plan.

17 SPECIAL MASTER VANASKIE: Are you sure?

18 MS. ROSE: Yes, I'm good.

19 SPECIAL MASTER VANASKIE: All right. And how about --

20 MS. LOCKARD: Hey, Judge?

21 SPECIAL MASTER VANASKIE: Yes.

22 MS. LOCKARD: For Teva, Mr. Stanoch and I need to
23 coordinate. I have three additional designations we need to
24 convey to him which they will get to him -- I have one almost
25 ready to go this afternoon and the other two I'll get out

1 hopefully over the weekend.

2 I heard you say you're not available on Tuesday or
3 Wednesday. Does that mean we might be looking at the end of
4 next week or when would we plan to hear the remainder of Teva?

5 SPECIAL MASTER VANASKIE: Let me see. Let me look at
6 my calendar again.

7 MR. SLATER: I'm not available Thursday or Friday.
8 That's Rosh Hashanah, so --

9 SPECIAL MASTER VANASKIE: Okay.

10 MR. STANOCH: I'm a gentile so that's completely fine
11 we do Teva on Thursday or Friday.

12 MR. SLATER: My congratulations to you, Dave.

13 (Laughter.)

14 MS. LOCKARD: I only worship the law, so I'm at your
15 disposal.

16 MR. NIGH: Are we on the record?

17 SPECIAL MASTER VANASKIE: I think so.

18 MR. SLATER: We can be ready Monday with the ZHP --

19 SPECIAL MASTER VANASKIE: Let me pull up my calendar.
20 We can be ready Monday for ZHP.

21 MR. RAE: Your Honor, for Torrent I think we had a
22 couple of things that we kind of pushed forward from today and
23 then we also owed you an update on some of the things with
24 Dr. Jaiswal's testimony by Monday, and I think Mr. Nigh and I
25 are going to try and work that out over the weekend. But to

1 the extent that there remain any parts of Dr. Jaiswal's
2 testimony that we need to be addressing in front of you, we
3 would be expecting to be prepared to do that on Monday.

4 SPECIAL MASTER VANASKIE: All right.

5 MR. RAE: If that works.

6 MR. NIGH: There's not a lot.

7 SPECIAL MASTER VANASKIE: What do we have left on
8 Teva?

9 MR. STANOCH: I'm waiting for Ms. Lockard to get me
10 Mr. Karlsson, Mr. Nassall, Mr. Barreto, but she says that she
11 wants to call him live so I can't play the testimony.
12 Mr. Nudelman, but she says -- the toxicologist, so that's the
13 general causation issue. There may be one other person --

14 MS. LOCKARD: Binsol.

15 MR. STANOCH: Oh, Mr. Binsol.

16 MS. LOCKARD: Tony Binsol.

17 So we have three that we think we can put before Your
18 Honor. And then we have pending disputes requiring
19 clarification from Judge Bumb on the general cause issue which
20 I think would be more efficient to get that before we go
21 through Dr. Nudelman. Dr. Nudelman is a toxicologist, so
22 there's just a lot that hinges on Judge Bumb's clarification of
23 that.

24 And then Mr. Barreto, you know, I know there is
25 certainly a dispute -- Mr. Rae and Mr. Nigh mentioned this

1 earlier -- about the situation with whether or not we can --
2 plaintiffs can play the designation of a witness who is coming
3 live, whether we can play our affirmatives and so forth.

4 So Mr. Barreto is an important witness, he's going to
5 be here live testifying, and so our position is that they
6 should not be able to play designations, they should have to
7 cross-examine him. And if they do play designations, then they
8 should not be allowed to then get a second bite at the apple.
9 I know there's a vehement dispute on that.

10 So I just don't think it makes sense to go through it
11 because if we win on this, then there will be no designations
12 played and we all would have wasted our time on him.

13 SPECIAL MASTER VANASKIE: All right. In terms of my
14 schedule -- go ahead, Adam, I didn't hear you.

15 MR. SLATER: I said plaintiffs, obviously, don't agree
16 with that position at all. I understand Ms. Lockard doesn't
17 like it. Unfortunately, that's just basic black-letter law
18 about how this is normally done.

19 I don't think we need to argue it with Your Honor
20 right now. I just wanted to --

21 SPECIAL MASTER VANASKIE: We're not going to argue it.

22 MR. SLATER: I just wanted to not leave it as if we
23 agree, because we don't.

24 SPECIAL MASTER VANASKIE: All right. I have Monday
25 available. I'd like to take care of the ZHP witnesses that

1 are -- that have already been sent to me or will be sent to me
2 by Sunday so we can be prepared to discuss them.

3 I'd like to take care of Jocelyn Rivera. I don't
4 think that will take much time regardless of what Daniel does
5 over the weekend in terms of pairing it down.

6 And the Teva witnesses, I don't have yet, I take it?

7 MS. LOCKARD: That's correct.

8 MR. STANOCH: No. I'm still waiting for Ms. Lockard
9 to flip them back to me.

10 And just for planning purposes, Your Honor, the three
11 that are not the ones that she said are in dispute, they're all
12 half or less than half time-wise of Mr. Vadsola. So you
13 already did the big ones is my only point.

14 SPECIAL MASTER VANASKIE: Okay. Well, I am available
15 next Thursday and Friday, so now I have open days for --

16 MR. NIGH: And, Your Honor, to the extent that there's
17 time on Monday, we still have four more witnesses for Torrent
18 that we haven't covered yet, but they are much, much smaller.
19 In other words --

20 SPECIAL MASTER VANASKIE: Do I have them, Daniel?

21 MR. NIGH: Not yet. We may get those to you over the
22 weekend so --

23 SPECIAL MASTER VANASKIE: If you get them to me by
24 Sunday, we may be able to address them on Monday.

25 MR. NIGH: Okay.

1 MR. RAE: And I don't know about Mr. Nigh's
2 availability late next week, but I'm happy to be available
3 Thursday or Friday if we need to be deal with anything --

4 SPECIAL MASTER VANASKIE: Are you available, Daniel?

5 MR. NIGH: Yes, I am, Your Honor, I'm available
6 Thursday. Friday I have some unavailability.

7 SPECIAL MASTER VANASKIE: So we'll take up whatever's
8 left for Torrent on Thursday.

9 MR. NIGH: Very good.

10 SPECIAL MASTER VANASKIE: And hopefully we can finish
11 ZHP up on Monday.

12 THE LAW CLERK: Again, Your Honor, this is Loretta.
13 May I ask the parties to directly also send me your information
14 -- the information -- sorry, I'm having work done at my
15 house -- to send the information directly to me as well as to
16 Judge Vanaskie so he doesn't have to, you know, send it to me.
17 Thank you.

18 SPECIAL MASTER VANASKIE: The designations and the
19 transcripts, please. So just copy Loretta on the email to me.

20 Is there anything else for today then?

21 MR. SLATER: I don't believe so.

22 SPECIAL MASTER VANASKIE: Let me just say how
23 impressed I was by the arguments that have been presented this
24 far. This is tedious work, to go through these deposition
25 transcripts. The objections are well articulated and the

1 responses have been very helpful from all sides. So it's clear
2 to me that you've given this tremendous amount of thought, as
3 it deserves. But I didn't want the day to go out without -- go
4 away without letting you know that certainly from where I sit,
5 I'm very impressed.

6 All right. Anything else?

7 MR. SLATER: No. Thank you very much, Your Honor.

8 MR. NIGH: Thank you, Your Honor.

9 MR. RAE: Thank you, Your Honor.

10 MS. LOCKARD: Thank you.

11 SPECIAL MASTER VANASKIE: Take care. Bye-bye.

12 (Matter adjourned at 3:06 p.m.)

13

14

15 - - - - -

16

17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled matter.

19

20 /s/ Sharon Ricci, RMR, CRR
21 Official Court Reporter

21

22 September 27, 2024
23 Date

23

24

25